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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV-90-147]

Oregon-California Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 947 for the 1990–91 fiscal period. Authorization of this budget will allow the Oregon-California Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1990, through June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 113 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and all counties in Oregon except Malheur County. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Under the Oregon-California potato marketing order, there are approximately 35 handlers and approximately 550 producers of potatoes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Oregon-California potato producers and handlers may be classified as small entities.

The Oregon-California Potato Committee (committee) unanimously voted at its June 9, 1989, meeting to authorize its Executive Subcommittee to forward a recommended budget and assessment rate for the 1990–91 fiscal year to the Secretary of Agriculture for consideration. The full committee unanimously approved the Executive Subcommittee's recommendation on June 15, 1990.

The committee, the agency responsible for local administration of the order, consists of producers and handlers of Oregon-California potatoes. These producers and handlers are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was discussed and approved at a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The recommended assessment rate was derived by dividing anticipated expenses by expected fresh shipments of Oregon-California potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The recommended budget for the 1990–91 fiscal year of $39,950 is $2,000 more than the previous year due to increases for staff salaries, rent and the cost of preparing the annual report.

The 1990–91 recommended assessment rate of $0.004 per hundredweight of potatoes is the same as last year. This rate, when applied to anticipated fresh market shipments of 8,578,000 hundredweight, would yield $34,312 in assessment revenue. This, along with $5,638 from interest income and the committee's authorized reserve, would be adequate for budgeted expenses. The projected reserve for the end of the 1990–91 fiscal period is $16,000, which would be carried over into the next fiscal year. This amount is within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the Federal Register on April 17, 1990 (55 FR 14287). That document contained a proposal to add § 947.241 to authorize expenses and establish an assessment rate for the committee. That rule provided that interested persons could file comments through June 18, 1990. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The 1990–91 fiscal period for the program begins on July 1, 1990, and the marketing

order requires that the rate of assessment for the fiscal period apply to all assessable Oregon-California potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIF., AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 947.241 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 947.241 Expenses and assessment rate.

Expenses of $39,950 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.004 per hundredweight of assessable potatoes is established for the fiscal period July 1, 1990, through June 30, 1991. Unexpended funds may be carried over as a reserve.

Dated: July 3, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–15894 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 563

[No. 90–1266]

RIN 1550–AA27

Loans to One Borrower Limitations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("OTS" or "Office"), is issuing a Final Rule to revise its regulations governing limitations on loans to one borrower to make them consistent with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA" or "Act"), Public Law No. 101–73, 103 Stat. 183. On March 13, 1990, the OTS issued an Interim Final Rule with request for comment that implemented section 5(u) of the Home Owners' Loan Act ("HOLA"), as amended by section 301 of FIRREA. This Final Rule includes revisions made to the Interim Final Rule that incorporate certain comments received by the Office during the 60-day comment period following publication of the Interim Final Rule. This Final Rule also establishes a transition period for certain well-capitalized, qualifying associations in order to impose FIRREA's new lending limitations on these associations in a more orderly manner.

FIRREA provides that section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks. FIRREA also provides Special Rules which permit loans for any purpose not to exceed $500,000, and which provide different limits for loans to develop domestic residential housing units and loans to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith ("Special Rules").

This Final Rule incorporates the section 5200 loan limitations, providing more stringent rules where necessary, provides more detailed regulatory implementation of requirements pursuant to the Special Rules and other provisions, provides that a savings association's investment in the commercial paper and corporate debt securities of one issuer shall be subject to the loans to one borrower limitation and establishes a separate limit for investments by a savings association in certain highly-rated debt obligations. Today's rule is effective on publication in the **Federal Register**.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas Maxwell, Staff Attorney, (202) 906–6649, Daniel Lonergan, Deputy Director for Opinions, (202) 906–6458, Karen Solomon, Associate Chief Counsel, (202) 906–7240, Regulations and Legislation Division, Office of Chief Counsel; James C. Porter, Financial Analyst, (202) 785–5427, Mary C. Short, Deputy Director for Supervisory Programs, (202) 906–5634, Supervision; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The FIRREA, which was signed into law by the President on August 9, 1989, substantially revises and reorganizes the law governing the operations and supervision of savings associations, including the limitations on lending to any one borrower. Section 301 of FIRREA adds new section 5(u) to the HOLA, which establishes more stringent limitations on the amount a savings association may loan to one borrower than previously existed under the Office's (then, the Federal Home Loan Bank Board's ("Bank Board")) loans to one borrower regulations. 12 CFR 563.93.[1] Under the Special Rules provision of section 5(u), however, FIRREA also establishes higher lending limits for loans to develop domestic residential housing units (provided specific requirements are met), higher limits for loans to finance the sale of real property acquired in satisfaction of debts previously contracted, and also permits loans for any purpose not to exceed $500,000 when the association's General Limitation calculation would not otherwise permit a loan in such an amount.

Background

Pursuant to its authority as operating head of the Federal Savings and Loan Insurance Corporation under title IV of the National Housing Act ("NHA"), 12 U.S.C. 1724–30, to issue regulations relating to safe and sound practices of insured institutions, the Bank Board for many years had imposed regulatory limitations on the amount of permissible credit extended to any "one borrower." *See, e.g.*, 28 FR 1629 (Feb. 21, 1963). These regulations were substantially amended in 1983 pursuant to the Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Public Law No. 97–320, 96 Stat. 1469. The DIA imposed additional, statutory loans to one borrower requirements with respect to commercial loans, providing that no association could make commercial loans to one

[1] The FIRREA abolished the Federal Home Loan Bank Board (Section 401 (a)(2)) and amended the HOLA to provide for a new regulatory agency, the Office of Thrift Supervision, whose Director is vested with all of the powers vested in the Federal Home Loan Bank Board or its Chairman prior to FIRREA's enactment that were not abolished or repealed by the Act, or transferred to the Federal Deposit Insurance Corporation, the Federal Housing Finance Board, the Resolution Trust Corporation, or the Federal Home Loan Mortgage Corporation. As a result of the Office's recodification of its regulations after FIRREA, the former lending limit provision at 12 CFR 563.9–3 now appears at 12 CFR 563.93. 54 FR 49411, 49573 (Nov. 30, 1989). Thus, references in today's rule to the loans to one borrower regulation previously promulgated by the Bank Board will be to 12 CFR 563.93.

borrower in excess of the amount a national bank having an identical total capital and surplus could lend such a borrower. 12 U.S.C. 1464(c)(1)(R) (1988).

The Bank Board implemented this statutory requirement by applying to commercial loans the general, statutory lending limit, that is, 15 percent of unimpaired capital and unimpaired surplus, that the Office of the Comptroller of the Currency ("OCC") applies to national banks. *See* 48 FR 23050 (May 23, 1983); *see also* 12 U.S.C. 84. With respect to commercial lending, therefore, savings associations have for some time been subject to lending limits similar to those applicable to national banks under 12 U.S.C. 84.

This confluence of regulatory approaches to lending limits by the Bank Board and the OCC continued, as the Board amended its lending limit regulations again in 1985, in part to adopt portions of the OCC's "common enterprise" aggregation approach,[2] thus broadening the definition of "one borrower" to encompass loans to separate entities where the expected source of repayment was the same for each person or where two or more otherwise unrelated entities used the loan proceeds jointly to acquire a business enterprise. These 1985 amendments also revised the definition of "outstanding loans" to adopt substantial portions of the Comptroller's definition of "loans and extensions of credit." *See* 50 FR 45089 (Oct. 30, 1985).

With the enactment of FIRREA, an even greater convergence of regulatory approaches has been mandated. FIRREA section 301 adds new section 5(u)(1) to the HOLA; it provides that, "Section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks." [3] The legislative history accompanying this provision suggests that the new limit was effective upon enactment. The Joint Explanatory Statement of the Committee of Conference provides:

> The bill generally makes savings associations subject to the same limit on loans to one borrower as apply to national banks. *The limits are incorporated by reference, and are self-executing.* H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess., at 408 (1989) (emphasis added).

The incorporation of the national bank lending limitations, however, presents several practical difficulties, and poses numerous interpretive questions. This Final Rule seeks to resolve many of these issues.

On March 13, 1990, the OTS issued an Interim Final Rule with request for comment that did not contain a transition rule phasing-in imposition of new, national bank lending limits made applicable by FIRREA. The Office did, however, solicit comments from interested parties on this particular issue and, as summarized below, several interested parties did address the need for transitional implementation of the national bank lending limits. *See* 55 FR 11294 (March 27, 1990). Today's Final Rule establishes a transition period during which the national bank limits will be phased-in as they apply for well-capitalized qualifying associations. This transitional measure is discussed in detail below under "XI. Transition Rule Phasing-In the New Lending Limitations."

During the interval between the statute's enactment and the promulgation of the Interim Final Rule, the Office responded to the numerous issues raised by FIRREA's new requirements by providing interim policy guidance through the issuance of Thrift Bulletins prepared by the Office's policy staff. Today's Final Rule supersedes these Thrift Bulletins to the extent that inconsistencies exist between these Thrift Bulletins and this Final Rule.

I. Summary of Comments

The Office received a total of twenty-one comment letters from twenty-two different commenters.[4] Those who submitted comments included: Eleven savings banks or savings and loan associations, six trade associations and five law firms.

Eleven commenters discussed the need for a phasing-in or transitional implementation of FIRREA's new lending limits, suggesting two and three year timeframes. Several commenters also suggested a higher limit overall. Two preferred a 30% limit, another 50%, while another commenter suggested that a sound and fair policy would be for the Office to allow an association's loans to exceed the proposed 15% limit where the savings association is not in default. The commenters also expressed concern that the Office make every effort to liberally interpret the regulation as it applies to grandfathered projects so as to reduce the possibility of lender liability lawsuits and the associated costs.

The Office has reviewed these comments and agrees that a limited transition period for the implementation of the national bank lending limits for certain well-capitalized, qualifying savings associations is desirable. Specific details of the transition rule incorporated in today's final rule are discussed in greater detail below. It should be noted at the outset, however, that this transistion rule applies only to certain categories of loans made by "qualifying associations" as defined in this rule. It must also be noted that the transition rule phases in the national bank lending limits set forth at 12 U.S.C. 84, which are made applicable to savings associations by section 5(u) of the HOLA. The Office clearly lacks the authority to phase in a lending limit other than that specified by section 84 and, therefore, rejects comments that suggest the Office phase in a 30 percent or 50 percent lending limit.

Nine commenters raised the need for flexibility in the regulation as it applies to loan workouts and restructurings. One commenter contended that the rule subjects REO workouts (other than for purchased money mortgages) to the same 15% limit as other loans, contrary to FIRREA's 50% limit for REO lending. Another commenter agreed with the treatment of REO but asked for clarification that the 15% limit only applies to new money loaned. Another expressed concern that the regulation, together with Thrift Bulletins TB 32 and TB 32-1, would not provide flexibility to workout troubled, pre-FIRREA commercial real estate loans. This commenter also stated that the rule is not clear as to when a workout will be considered a new loan and further asserted that the Office, in fashioning the rule, misunderstood OCC policy in that the OCC regulations were not meant to apply to loans that are nonconforming because of changes in statutory or regulatory lending limits. Another commenter requested that the Office clarify whether a purchase money note becomes subject to the lending limits if the association advances additional funds to the purchaser in conjunction with the financing of the sale of REO.

In response to these comments, the Office notes that its policy concerning the sale of REO is identical to that of the OCC. Although section 5(u)(2)(B) of the HOLA provides that a savings association may loan up to 50 percent of

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[2] Under OCC regulations, loans and extensions of credit to one person will be attributed to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the other person(s), or when a "common enterprise" is deemed to exist between such persons. The existence of a "common enterprise" will depend upon an evaluation of particular facts and circumstances. *See* 12 CFR 32.5.

[3] The statutory provisions governing national banks' lending limitations are found at 12 U.S.C. 84.

[4] Comments received by the Office after the close of the comment period on May 29, 1990 (the date clearly noted in the March 1990 Interim Final Rule) have not been summarized for inclusion in this preamble.

unimpaired capital and surplus to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted, the Office stated in the Interim Final Rule that, in order to protect the safety and soundness of savings associations, it would apply a 15 percent limit to such loans. This more stringent lending limit that applies to new money advanced to a borrower pursuant to the financing of the sale of REO is retained in this Final Rule as well.

This Final Rule also retains the definition of "loans" set forth in the Interim Final Rule which excludes purchase money mortgage notes received by a savings association in connection with the sale of REO (provided the association is not placed in a more detrimental position holding the note than holding the real estate). If, in addition to taking a purchase money mortgage note, an association elects to advance additional funds to the purchaser, only this "new money" shall be subject to the general 15 percent lending limit. The purchase money note is not a "loan" for lending limit purposes regardless of whether the association advances new funds to the purchaser of the REO. This Final Rule retains this position.

One commenter thought that pre-FIRREA loans that are renewed should not be considered nonconforming if efforts to refinance have been made. Another commenter, citing the OCC's transition rule regarding renewals (12 CFR 32.7), argued that the Office should adopt a two year rule for bringing loans into compliance with the new lending limits. One commenter thought that non-written binding commitments that were made prior to FIRREA should be recognized and that lines of credit and loans in process should be permitted to be renewed so that they may be fully funded. There were also several requests for the Office to clarify what is meant by "new money," including what constitutes "best efforts" to refinance a loan, whether chapter 11 restructuring is exempt from the lending limits, how pre-FIRREA revolving lines of credit will be considered, and whether advances to pay real property taxes and similar expenditures disqualify a loan restructuring from renewal treatment.

In response to these comments, the Office notes that the Interim Final Rule adopted the OCC's position concerning the renewal of nonconforming loans. This position provides that the renewal of a loan does not constitute a new loan for lending limit purposes provided no new funds are advanced by the association to the borrower and a new borrower is not substituted for the original obligor. The renewal of a nonconforming loan, however, presents an opportunity to the savings association to bring the loan into conformance with the lending limits. Thus, the association must make best efforts to bring the loan into conformance prior to renewal. If these efforts are unsuccessful, the association may renew the nonconforming loan.

This Final Rule does not provide guidance in addition to that already provided by the Office with respect to what measures an association must take to meet the requirement that it make "best efforts" to bring a nonconforming loan into conformance prior to renewal. Thrift Bulletin 32-1 stated that an association should attempt to have the debtor partially repay the loan or obtain another institution's nonrecourse participation in the loan to bring it into lending limit compliance. It is incumbent upon the association to demonstrate with written evidence, to be presented to that appropriate person, committee, or the board of directors in conjunction with the loan approval process, that these efforts have been made. The Office feels that this general guidance is preferable to providing a specific definition of "best efforts" in this Final Rule.

The Office also notes that its policy concerning the renewal of unfunded or partially funded loan commitments is consistent with the OCC's policy. In the Interim Final Rule and in the Thrift Bulletins issued following enactment of FIRREA, the Office stated that savings associations may advance additional funds to a borrower pursuant to a legally-binding loan commitment that was within the association's lending limit when made. It is incumbent upon the association to establish, however, either by a written agreement or by other file documentation, that a commitment represents a legally binding commitment to fund. If doubt exists as to the legally binding nature of the commitment, the association must include in its file documentation a well-reasoned opinion of counsel that firmly concludes that the loan commitment represents a legally binding commitment to advance funds.

In addition, a savings association must meet a heavy burden of proof to establish that it is legally obligated to advance funds pursuant to a loan commitment where the borrower has not paid a fee for the new funding. The Interim Final Rule stated that, in general, loan commitments for which the prospective borrower has paid no fee to the thrift should be reviewed closely to determine if a binding commitment exists. Such agreements typically contain broad provisions permitting the lender to decline to fund on subjective grounds that effectively render the commitment unenforceable. In the absence of payment of such a fee, the association must overcome with convincing evidence the strong presumption that the commitment is not legally binding. Today's Final Rule retains this position.

In comment letters and other communications received by the Office, several interested parties have requested particular guidance with respect to "revolving lines of credit" and "loans in process." In these communications, however, these parties have failed to establish, in the Office's view, that these arrangements are any different from other types of loan commitments. In the absence of such evidence, revolving lines of credit and loans in process shall be subject to the same lending limit standards as other loan commitments.

A paragraph has been added to this Final Rule that reiterates the position concerning the renewal of unfunded or partially funded loan commitments that has been stated consistently by the Office following enactment of FIRREA. In short, this paragraph provides that, upon the expiration of a partially funded loan commitment, only the funded portion may be renewed if this amount exceeds the association's lending limit (and best efforts were first made to bring it into compliance). This renewed portion shall then be treated as a nonconforming term loan. If the borrower subsequently repays a portion of the outstanding balance owed to the association, new funds may *not* be advanced (or re-advanced) to the borrower until the outstanding balance of the loan is brought within the association's lending limits. This position also is consistent with the OCC's policy.

In the Office's opinion, the issues raised in the other comment letters discussed in this section are issues that would best be addressed through the future issuance of opinion letters by the Office of Chief Counsel. In particular, the comment letters requesting guidance on whether Chapter 11 restructurings and certain other expenditures made by a savings association to pay expenses necessary to preserve the value of its assets shall be subject to the lending limits are not addressed in this Final Rule. Becaue of the fact-specific nature of these inquiries, the Office feels that these issues are best addressed through opinion letters that are written in

response to letters that set forth specific details rather than through the issuance of general guidance in a regulation.

Four commenters addressed the rule's treatment of subsidiaries and service corporations. One commenter was concerned with narrowing the definition of subsidiary, specifically as it applies to insurance and real estate activities. Another remarked on the definition of "affiliate" in the transactions with affiliates regulation and its ripple effect on the loans to one borrower rule. This commenter opined that loans to service corporations should not be covered by the loans to one borrower rule because service corporations are treated the same as savings associations, rather than being outside the scope of the lending limits because they are considered affiliates. One commenter asked for a clarification of the word "eligible" as it is used in the definition of subsidiary. Finally, one commenter thought the definition of "subsidiary" should be revised to include companies that engage solely in a type of activity authorized for Federal associations and not to the amount of the activity in which the subsidiary engages. The commenter reasoned that when an activity is conducted in the subsidiary, the capital regulations will effectively regulate risky subsidiaries.

With one exception, these comments have not been incorporated in this Final Rule. Today's rule substitutes the term "operating subsidiary" for the term "subsidiary" as defined in the Interim Final Rule and deletes the definition of "affiliate" set forth in the Interim Rule. The definition of "operating subsidiary" in this Final Rule incorporates the comment that suggests that the Office delete the requirement that, in order to qualify as a subsidiary (or operating subsidiary), a company must engage solely in activities of the type and in the amount that a Federal savings association may directly conduct. Thus, this Final Rule provides that an operating subsidiary may engage solely in activities in which a Federal savings association may directly conduct pursuant to section 5(c) of the HOLA. This rule deletes the requirements, set forth in the definition of "subsidiary" in the Interim Final Rule, that such a company engage in permissible activities *in the amount* permitted for a Federal savings association.

Because this Final Rule does not define the terms "affiliate" and "subsidiary," the comment letters that request the Office to amend these definitions have not been incorporated in this Final Rule. These comment letters will be reviewed, however, when the Office promulgates its Final Rule concerning transactions between a savings association and its affiliates. It must be noted that, if the Office modifies the definitions of "affiliate" and "subsidiary" in the transactions with affiliates Final Rule, it may also be necessary to amend the definition of "operating subsidiary" set forth in this rule as well.

Four commenters took issue with the regulation's aggregation of loans to partners of limited partnerships for lending limit purposes. Commenters viewed this provision of the rule as inconsistent with the OCC's treatment of similar loans. One commenter argued that the limit is significantly more restrictive than the OCC's treatment of such loans. The commenter asserted that the OCC considers whether the proceeds of a loan made to a limited partner are used for the benefit of the partnership or whether any common enterprise is deemed to exist between the limited partner and the partnership prior to attributing a loan made to a limited partner to a partnership of which he is a part. The difference in aggregation rules, argued the commenter, results in national banks having a competitive advantage over thrifts.

Upon further review of the provisions in the Interim Final Rule concerning loans to limited partners and limited partnerships, the Office agrees with these comments. The Office has thus deleted from the definition of "one borrower" set forth in the Interim Final rule the provision concerning loans to limited partners owning an interest of 10 percent or more and loans to partnerships that include a limited partner owning an interest of 10 percent or more. The Office will apply to such loans the "common enterprise" and "direct benefit" tests set forth at § 32.5 of the OCC's regulations. These requirements are discussed in greater detail below.

Two commenters were of the opinion that income capital certificates and mutual capital certificates should be included in unimpaired capital and unimpaired surplus. One commenter argued that these instruments should be treated similarly to net worth certificates because they represent similar securities issued by the same entity. The commenter thought that this characteristic, together with the fact that they are considered equivalent for capital purposes, outweighs the fact that there are not similar instruments for national banks.

This Final Rule includes a statement that income capital certificates and mutual capital certificates are *not* includable in unimpaired capital and surplus. The OCC's regulations (12 CFR part 3) provide that a national bank may include in its calculation of unimpaired capital and unimpaired surplus net worth certificates issued pursuant to 12 U.S.C. 1823(i). In the Interim Final Rule, the Office noted that the statutory authority for net worth certificates held by savings associations, set forth at former section 12 U.S.C. 1729(f)(5), is substantially identical to section 1823(i). Because of the substantially identical nature of these two statutes, the Interim Final Rule provided that savings associations may include net worth certificates within the calculation of unimpaired capital and surplus. Income capital certificates and mutual capital certificates are authorized by former section 12 U.S.C. 1729(f)(6), however, which is not substantially identical to section 1823(i). For this reason, savings associations may not include these instruments within unimpaired capital and surplus.

Four commenters discussed corporate debt securities and commercial paper. Support was expressed by commenters for retaining additional investment authority in highly-rated corporate debt and commercial paper. One commenter reasoned that, if the general lending limit were applied to these instruments, investment income would decrease due to the need to purchase in odd lots and credit risk would increase because of the need to diversify portfolios beyond the safest investments available.

Another commenter was concerned with the disparity in investment authority between banks and thrifts in this area which would result in more stringent lending limits for thrifts. National banks have separate authorities for lending and investing. Under 12 U.S.C. 84, national banks may lend to one entity 15 percent of unimpaired capital and unimpaired surplus. Under 12 U.S.C. 24, national banks may invest in the securities of the same entity as much as an additional 10 percent of unimpaired capital and unimpaired surplus. The commenter remarked that this disparity in investment authorities between national banks and thrifts could diminish the value of a savings association charter. Other commenters expressed the desire that the $500,000 exemption apply to corporate debt and commercial paper or that the corporate debt securities not be subject to the loans to one borrower rule at all, but subject only to 12 CFR 545.75.

After reviewing the commenters received and considering the repercussions of revoking this additional

investment authority in rated obligations, the Office is reinstating this authority, although with modifications. Because the Office remains concerned that limits tied to percentages of assets or absolute dollar amounts can result in unsafe concentrations in loans to and investments in one issuer, this authority will now function as a percentage of capital. This modification to the Interim Final Rule is discussed in greater detail below.

The Office received one comment concerning the application of the lending limits to the portion of a loan that represents accrued interest. Another commenter stated that capitalization or deferral of accrued interest should not render a renewal (or any part thereof) as a new loan for lending limit purposes.

One commenter thought that loans or advances to a federal agency should not be subject to limitation and that overnight investments in Federal funds should be excluded. This commenter also stated that loans or participation interests sold without recourse reduce risk and, therefore, should not be includable in the definition of "loan."

In the Office's view, these issues are already addressed in the OCC's lending limit regulations. In particular, § 32.108 of the OCC's regulations provides that the lending limits do not apply to the portion of a loan or extension of credit that represents accrued or discounted interest. Section 32.6(e) provides that loans to or guaranteed by a federal agency are not subject to the lending limits. Finally, § 32.102(b) provides that sales of Federal funds with a maturity of one business day or under a continuing contract are not "loans and extensions of credit" for lending limit purposes. However, sales of Federal funds with a maturity of more than one business day are subject to the lending limits. These OCC regulations and codified interpretations apply to savings associations in the same manner and to the same extent that they apply to national banks.

Finally, several of the commenters expressed the preference that flexibility in applying the rule be maintained by application and interpretation on a case-by-case basis. In response to these comments, the Office simply notes that FIRREA does not expressly authorize the OTS to waive, through a waiver or forebearance procedure, the application of the national bank lending limits to savings association.

II. The New General Rule: A Lower Limit

FIRREA requires that the 12 U.S.C. 84 lending limitations shall apply to savings associations "in the same manner and to the same extent" as they apply to national banks. First, today's rule replaces the previous regulation set forth under 12 CFR 563.93. With respect to the new general loans to one borrower limitation, today's rule replaces the prior limitation with two new provisions virtually identical to section 12 U.S.C. 84 (a)(1) and (a)(2), but which substitute the term "savings association" for the term "national banking association."

The new limitation provides that total loans and extensions of credit to a person outstanding at one time and not fully secured by collateral at least equal in value to the amount of the loan or extension of credit shall not exceed 15 percent of the association's unimpaired capital and unimpaired surplus (the "General Limitation"). Of course, this 15 percent limitation is the maximum permissible for savings associations; safe and sound operation may dictate that the association set a lower, more prudent limit for itself. The rule also provides, as does section 84(a)(2), that in addition to this 15 percent general limitation, total loans and extensions of credit to a person outstanding at one time and fully secured by "readily marketable collateral" shall not exceed 10 percent of the unimpaired capital and unimpaired surplus of the association. Today's rule incorporates the OCC's definition of "readily marketable collateral" set forth at 12 CFR part 32.

The incorporation of these two sections, as well as other section 84 provisions discussed ahead, initially raised questions regarding the definitions to be employed in implementing these new statutory limits, as well as questions regarding the extent to which either the substantive regulations or the interpretive opinions issued by the OCC as to these limitations apply to savings associations. The legislative history suggests that these section 84 limits should apply to the same extent that they apply to national banks.

It is the Office's view that, in addition to section 84 itself, the statute requires it to apply to savings associations the national bank limits "in the same manner and to the same extent" that such limits apply to national banks. As the regulations and codified opinions of the OCC at 12 CFR part 32 "apply" to national banks, the OTS, in exercising its rulemaking authority granted under the Act, is required to regulate savings associations in a consistent [5] manner and to ensure that its regulations employ the national bank limits. Although it is anticipated that the differences in the banking and thrift industries may give rise to differences in the application of these lending limit principles, Congressional intent is clear that the national bank lending limits are not to be abridged. Absent evidence that the national bank lending limits do not address these differences, or are not sufficiently strict, the OTS will apply the regulatory limitations promulgated by the OCC pursuant to the notice and comment procedures outlined in the Administrative Procedure Act ("APA"). 5 U.S.C. 551 *et seq.*[6]

Thus, the OTS has determined that the Comptroller's lending limit regulations and the interpretive rules set forth at 12 CFR part 32 are to be followed by savings associations. The Office will give substantial weight to the Comptroller's noncodified legal opinions interpreting the national bank lending limits, although they have not been published for notice and comment, and will regard them as strong evidence of safe and sound banking practices, but the Office regards these opinions as advisory only.

As discussed below, general definitions set forth at 12 CFR part 32 are to be applied by associations in implementing the new statutory limitation, as are other terms employed in the part 32 regulations but defined under other OCC regulations. It should be noted that this application of the regulations an interpretations codified under part 32 includes the Temporary

[5] There are several references throughout this rule to FIRREA's requirement that the Office apply section 5(u) to savings associations in a manner that is "consistent" with the manner in which the OCC applies section 84 to national banks. By using the term "consistent" throughout this rule, the Office intends that it will apply the section 84 lending limitations to savings associations "in the same manner and to the same extent" as the OCC applies these limits to national banks, as required by section 5(u). The Office also intends that it will apply the section 84 limitations to savings associations in a manner that is "no less stringent" than the manner in which the OCC applies these limits to national banks, as required by section 4(c) of the HOLA.

[6] In the Office's view, its general rulemaking authority set out in section 3(b)(2), and in section 4(a)(2) of the HOLA with respect to Federal savings associations in particular, authorizes the OTS to promulgate regulations implementing FIRREA's new lending limits. However, this rulemaking authority is circumscribed by section 5(u)(1)'s requirement that the national bank lending limitations be applied "in the same manner and to the same extent" as they apply to national banks and by the requirement of section 4(c) that all of the Office's regulations and policies governing the safe sound operation of savings associations be no less stringent than those of the OCC. Today's Final Rule applies, in large measure, the lending limit regulations and codified interpretations of the OCC under 12 CFR Part 32. The section 5(u)(2) Special Rules are not governed by the "in the same manner and to the same extent" language.

Rule issued by the Comptroller addressing the lending limit treatment of loan commitments where the association experiences and intervening drop in capital. *See* 53 FR 23752 (June 24, 1988). This June 1988 rule, of course, only applies to loan commitments entered into on or after FIRREA's date of enactment by an association experiencing a drop in capital. The Comptroller has recently proposed amendments to its Temporary Rule, 54 FR 30054 (July 18, 1989). Savings associations are well-advised to carefully review these documents.

Of greater significance to savings associations, however, are recently proposed, broad amendments to the OCC's part 32 (and related parts 7 and 3) lending limits, 54 FR 43398 (Oct. 24, 1989). This Office will closely monitor this rulemaking, and recommends that savings associations also closely review this OCC proposal.

III. General Rule Definitions: Calculating "Unimpaired Capital and Unimpaired Surplus"

A. Applying the Comptroller's Definitions

Because it is the basis for calculating a savings association's lending limit, the meaning of the term "unimpaired capital and unimpaired surplus" is of fundamental importance. Section 5(u) requires the OTS to apply 12 U.S.C. 84 to savings associations "in the same manner and to the same extent as it applies to national banks." The OCC's lending limit regulations, 12 CFR part 32, limit the amount a national bank may lend to one person to an amount not to exceed 15 percent of the bank's unimpaired capital and unimpaired surplus.[7] Because FIRREA requires OTS to adopt the OCC lending limits, savings associations must apply the definition of "unimpaired capital and unimpaired surplus" as it is defined in the OCC's regulations.[8] Today's rule sets forth a definition of "unimpaired capital and unimpaired surplus" that is identical to the definition set forth at § 3.100.

Pursuant to § 3.100(a), "capital" includes the amount of common stock and perpetual preferred stock outstanding and unimpaired. Section 3.100(c) defines "surplus" as the sum of: (1) Capital surplus; undivided profits; reserves for contingencies and other capital reserves (excluding accrued dividends on perpetual and limited life preferred stock); net worth certificates issued pursuant to 12 U.S.C. 1323(i) (Federal Deposit Insurance Act); minority interests in consolidated subsidiaries; and allowances for loan and lease losses; minus intangible assets; (2) purchased mortgage servicing rights (savings associations may include the lesser of the fair market value or the amortized cost of purchased mortgage servicing rights); (3) mandatory convertible debt to the extent of 20 percent of total capital and surplus; and (4) other mandatory convertible debt, limited life preferred stock and subordinated notes and debentures to the extent set forth in § 3.100(f)(2).

The Office will issue guidance that supplements this rule to assist savings associations in calculating these components of capital and surplus.

B. The Treatment of Intangible Assets

The definition of capital and surplus under § 3.100 to be used for lending limit purposes differs in several ways from the capital provisions set forth at section 5(t) of the HOLA, which provide capital adequacy requirements for savings associations. One of the most significant of these differences is the extent to which intangible assets, including goodwill, may be included in an association's capital. Section 5(t) allows certain supervisory goodwill to be phased out of core capital over a period of several years. Section 3.100 is much more restrictive. *Compare* 12 U.S.C. 1464(t) and 12 CFR part 567 *with* 12 CFR 3.100.

The Comptroller's rules currently require intangible assets other than purchased mortgage servicing rights to be deducted from capital for purposes of determining both a national bank's capital adequacy and its lending limit. *See* 12 CFR 3.100(c)(1), 12 CFR 3.2(c)(1)(i).[9] At the time these rules were adopted, however, the OCC promulgated a transition rule for intangible assets ("capital transition"). Section 3.3(b) of the Comptroller's regulations sets forth this capital transition rule; it permits the inclusion in capital of intangible assets purchased prior to April 15, 1985 and accounted for in accordance with the instructions of the OCC.[10] The amount of intangibles that may be included in capital is limited to 25% of the sum of certain capital components.[11] Section 5(t)(3) of the amended HOLA, on the other hand, permits savings associations to phase out the amount of qualifying supervisory goodwill includable in core capital over a five year period ending December 31, 1994, but only for purposes of determining capital adequacy. It is section 5(u)'s incorporation of the national bank limits which requires that OTS apply the OCC's capital computation for loans to one borrower purposes. *See* 135 Cong. Rec. S10206 (August 4, 1989).[12]

Therefore, the transition rule for intangible assets set forth at § 3.3(b) applies to all intangible assets other than purchased mortgage servicing rights, which are specifically included in unimpaired capital and unimpaired surplus. Other intangible assets, such as core deposit intangibles, goodwill, and favorable leaseholds, are not fully included in unimpaired capital and surplus under 12 CFR 3.100. *See* 50 FR 10207, 10212 (March 14, 1985). Thus, these other intangible assets are subject to the § 3.3(b) transition period.

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[7] The term "unimpaired capital and unimpaired surplus" is not defined under the section 5(t) capital provisions for savings associations. In other provisions of the section 5(u) lending limits, however, Congress specifically referenced the section 5(t) capital standards when it so intended (*See* Section 5(u)(2)(A)(ii)(II)). This, in addition to the language of section 5(u)(1) and the Conference Report's statement that such national bank *limits* were incorporated by reference, indicate that Congress intended that OTS apply the OCC definition of "unimpaired capital and unimpaired surplus" to savings associations.

[8] The definition of unimpaired capital and unimpaired surplus at 12 CFR part 32 references part 3 of the OCC's regulations. "Unimpaired capital and unimpaired surplus" is defined at 12 CFR 32.2(c) as being equivalent to the term "capital and surplus" as defined at 12 CFR 7.1100. Section 7.1100 has been superseded by 12 CFR part 3 and the term "capital and surplus" is not specifically defined at 12 CFR 3.100. *See also* 54 FR 43398, 43406 (Oct. 24, 1989).

[9] The OCC has promulgated new, risk-based capital standards, which will begin to apply to national banks as of December 31, 1990, and be fully phased-in as of December 31, 1992. *See* "Risk-Based Capital Guidelines," 54 FR 4168 (Jan. 27, 1989). Those risk-based capital standards will alter the treatment of intangible assets for capital adequacy purposes. First, intangibles grandfathered under the section 3.3(b) provision discussed in text will continue to qualify for grandfathering treatment only until December 31, 1992. After that date, the OCC will require their deduction from Tier 1 capital. 54 FR at 4182. *See also* 54 FR 46394, 46398 (Nov. 3, 1989) (deduction of grandfathered intangibles, after December 31, 1992, for purposes of the leverage limit applicable to national banks). Second, however, the OCC will permit the inclusion in Tier 1 capital of certain intangibles provided they meet a three-part test set forth in the regulation. 54 FR at 4179. The OTS applies an identical three-part test for inclusion of intangibles in core capital, except with regard to those intangibles the treatment of which is specifically prescribed by section 5(t) of the HOLA. 12 CFR 567.5(a)(2).

[10] The capital transition rule does not cover purchased mortgage servicing rights which are specifically permitted to be included in capital under § 3.2(c)(2) and under the accompanying interpretive rule, § 3.100(c)(2).

[11] *See* 12 CFR 3.2(c)(1).

[12] It should be noted that, although § 3.3(b) provided a transition period during which banks could include certain intangible assets in primary capital, § 3.3(b) does not expressly provide a similar transition period for savings associations. Because FIRREA requires the OTS to apply the OCC's lending limits to savings associations "in the same manner and to the same extent" as they apply to national banks, savings associations are bound by the strict terms and date set forth in § 3.3(b).

It should be emphasized that the differences in statutory authority under HOLA sections 5(t) (capital adequacy) and 5(u) (lending limits) result in different capital computations for purposes of 12 CFR part 567 and this section, respectively. In short, items that may be included in the calculation of unimpaired capital and unimpaired surplus may not necessarily be included in calculating section 5(t) capital, and vice versa.

Today's rule applies the transition period of § 3.3(b) to savings associations in the same manner and to the same extent it applies to national banks. Therefore, the term "capital and surplus" for purposes of applying the loans to one borrower limitations to savings associations includes only the intangible assets that meet the requirements set forth at § 3.3(b). A savings association must have purchased the intangible asset prior to April 15, 1985 and accounted for it in accordance with the instructions of the OCC before it may include the asset in its primary capital.[13] If these requirements are met, the intangible asset may be included within primary capital in an amount not to exceed 25 percent of the sum of § 3.2(c)(1). Purchased mortgage servicing rights are the only intangible asset not subject to this transition rule.

C. Net Worth Certificates

Pursuant to 12 CFR 3.2(c)(1) and 3.100(c)(1), a national bank may include in primary capital and surplus net worth certificates issued pursuant to 12 U.S.C. 1823(i). Section 1823(i) provides that the FDIC may, in its sole discretion, increase or maintain the capital of a qualified institution by making periodic purchases of net worth certificates. The Bank Board, prior to enactment of FIRREA, was also authorized to purchase net worth certificates from qualified savings institutions pursuant to 12 U.S.C. 1729(f)(5). This provision was removed by FIRREA at the same time that section 1823(i) was amended to apply to all depository institutions.

Section 1823(i) and former section 1729(f)(5) are substantially identical in their description of the authority of the FDIC and Bank Board, respectively, to purchase net worth certificates from qualified institutions. Therefore, today's rule permits savings associations to include within unimpaired capital and surplus net worth certificates issued pursuant to 12 U.S.C. 1729(f)(5). This provision is made in light of the substantially identical language of sections 1729(f)(5) and 1823(i) and is consistent with the requirement of FIRREA that OTS apply to savings associations the same limits that apply to national banks. Without this provision, savings associations would not be able to include net worth certificates within capital and surplus since the certificates had been issued pursuant to a statute different from, albeit substantially identical to, section 1823(i). The Office has determined that savings associations may *not* include within unimpaired capital and unimpaired surplus income capital certificates and mutual capital certificates, which were authorized by former section 1729(f)(6) rather than former section 1729(f)(5).

D. Other Concerns—Intervening Capital Drop

As noted above with respect to loan commitments entered into after the effective date of FIRREA, the Comptroller's June 1988 Temporary Rule with request for comment will be applied to savings associations. 53 FR 23752 (June 24, 1988). This rule can be applied to loan commitments made on or after the effective date of FIRREA by savings associations experiencing a decline in capital. In general, the OCC rule provides relief for banks which have experienced a decline in capital and, hence, their lending limits after entering into loan commitments. The OCC permits a legally binding commitment to advance funds, within a bank's lending limit when entered into, to be treated as a loan "made" at the time the bank entered into the commitment. Thus, a subsequent decline in lending limits caused by a reduction in the bank's capital would not result in a violation of the lending limits when the commitment is funded. *See* 53 FR 23752, 23753 (June 24, 1988); 54 FR 30054 (July 18, 1989).[14]

The Office also adopts the OCC's policy concerning the renewal of an unfunded or partially funded loan commitment that was within the association's lending limit when made. Consistent with this OCC policy, the Office views the expiration of an unfunded or partially funded loan commitment, or any restructuring of the commitment, as an opportunity for a savings association to bring the loan commitment into conformance with the association's then-applicable lending limit. Thus, where a savings association has entered into and funded or partially funded a loan commitment which was within the association's lending limit when made, and the association's lending limit subsequently declines, the association may renew that protion of the loan commitment which has been funded as though the loan commitment were a term loan. An unfunded loan commitment, or the unfunded portion of any loan commitment, which would exceed the association's lending limit if made on the date of the renewal, may not be renewed.

IV. General Rule: Application of the Part 32 Regulations to Savings Associations

The statutorily-mandated application of the national bank limits poses many practical and interpretive difficulties for savings associations, which previously have not been generally subject to these limitations. Cognizant of the many uncertainties created by FIRREA's imposition of these new limits, the OTS envisions that many issues will continue to require resolution through OTS legal opinions, OTS Legal Alert Memos, Thrift Bulletins and similar policy issuances, as well as through informal and formal guidance and assistance from the OCC.

The discussion below is meant to clarify and discuss the applicability of the new limitations, and address particular questions regarding the scope of the new provisions and the appropriate definitions to be employed.

A. Scope

This Final Rule slightly modifies the scope provision set forth in the Interim Final Rule. Today's rule provides that the loans to one borrower limitations apply to savings associations and their "operating subsidiaries," as defined in this rule. The definition of "operating subsidiary" in this rule is virtually identical to the definition of "subsidiary" in the Interim Final Rule. Both the term "subsidiary" in the Interim Final Rule and the term "operating subsidiary" in this Final Rule are defined as companies under the control of a savings association that

[13] For an example of the accounting methods employed by the OCC with respect to certain intangible assets, refer to Banking Circular BC-164, issued on December 29, 1981. In general, BC-164 provides that core deposit intangibles should be amortized over either the estimated average life or the actual life of the core deposits, except that the amortization period cannot exceed 10 years.

[14] Historically, a loan commitment was not deemed "made" until funded. Banks encountered difficulty, however, if they entered into an underline commitment (within the lending limits) but experienced a drop in capital in the intervening period before the commitment was actually funded. Because the historical approach required that the lending limits be applied when the loan was "made," and it was not "made" until the later date of funding, the lower lending limit reflecting the capital drop would apply. The OCC's Temporary Rule remedies this problem by permitting underline commitments to be deemed "made" when entered into. Thus, by treating such commitments as having been "made" prior to the drop in capital, the higher lending limit would apply.

engage solely in activities in which a Federal savings association may directly conduct pursuant to section 5(c) of the HOLA. The definition of "operating subsidiary" in this Final Rule, however, deletes the requirement that such companies engage in these permissible activities *in the same amount* that is permissible for a Federal savings association.

Other than this revision, this Final Rule merely substitutes the term "operating subsidiary" for the term "subsidiary" wherever it appears in the Interim Final Rule. This revision to the Interim Final Rule does not affect the types of entities that are subject to the loans to one borrower limitations as described in the Interim Final Rule.

Today's Final Rule also deletes the definitions of "affiliate" and "subsidiary" set forth in the Interim Final Rule. This amendment to the Interim Rule is necessary because the Office has not reached final decisions on the definitions of "affiliate" and "subsidiary" for purposes of a Final Rule governing transactions between a savings association and its affiliates. The loans to one borrower Interim Final Rule set forth definitions of these terms that were identical to the definitions set forth in the proposed transactions with affiliates regulation. If these definitions were to be retained in this Final Rule but were to be revised in the transactions with affiliates Final Rule, savings associations would be confronted with conflicting definitions of the terms "affiliate" and "subsidiary" as set forth in the two rules. In the Office's view, this would create confusion in the extent to which the two rules would apply to certain transactions between a savings association and companies under its control.

For this reason, the definitions of "affiliate" and "subsidiary" are deleted from this Final Rule and the term "subsidiary" as it appears in the Interim Final Rule is replaced with the term "operating subsidiary" in this Final Rule. Thus, today's rule defines an operating subsidiary of a savings association as any company controlled by a savings association, the voting stock of which is eligible to be held only by savings associations, that is engaged solely in activities of the type that a Federal savings association may directly conduct under section 5(c) of the HOLA. Accordingly, this Final Rule applies to all loans made by savings associations and their operating subsidiaries. This Rule does not apply to loans made by a savings association to its affiliates, subsidiaries or operating subsidiaries.

The Office remains concerned, however, that the scope of the loans to one borrower limitations complement the scope of the Office's transactions with affiliates rule. The loans to one borrower Interim Rule and transactions with affiliates Proposed Rule were drafted so as to avoid the possibility that both limitations would apply to transactions between a savings association and a company under its control. 55 FR 11298. Although today's Final Rule does not define the terms "affiliate" and "subsidiary," the Office remains concerned that the definitions of these terms in future transactions with affiliates Final Rule be consistent with the definition of "operating subsidiary" in today's Final Rule. Accordingly, savings associations are cautioned that any revision to the terms "subsidiary" and "affiliate" in the transactions with affiliates Final Rule may necessitate a similar revision to the definition of "operating subsidiary" in this rule as well.

B. Definitions: General Considerations

FIRREA provides that the section 84 lending limits are to apply to savings associations in the same manner and to the same extent that they apply to national banks. As noted above, today's Rule provides that the OCC's part 32 regulatory definitions are to apply to savings associations as well. This, of course, includes definitions of the terms "unimpaired capital and unimpaired surplus," "loans and extensions of credit," and "person." Just as the Office has been concerned to reconcile differences between the scope of the two agencies' lending limit regulations, however, the Office has similarly been concerned that the OCC's definitions may result in "coverage gaps" or instances where relationships or extensions of credit that were formerly addressed under § 563.93 will be unaddressed or less stringently regulated under the OCC's definitions.

For this reason, in the Office's recodification of its prior loans to one borrower regulation pursuant to its comprehensive recodification of regulations after FIRREA, 54 FR 49411, 49573 (Nov. 30, 1989), § 563.93 was revised to include an introductory sentence indicating that, in addition to the lending limit provisions of section 5(u), associations were also required to apply any requirements set forth under the former § 563.93 provision that were more stringent than the standards of section 5(u). Today's rule dispenses with this interim guidance and generally requires only that savings associations follow the OCC's lending limit provisions in today's rule. In general, today's rule does not retain the requirements set forth under § 563.93; in a few instances, however, the Office is exercising its authority under sections 3 and 4, as well as under section 5(u)(3), to impose slightly different restrictions.

As was noted above, the OTS and the OCC have moved much closer in their regulatory approaches to lending limitations in recent years. For this reason, many of the concepts underlying the OCC's definitions of "loans and extensions of credit" and "contractual commitment to advance funds," as well as its loan aggregation policies under § 32.5, had been incorporated in the former § 563.93 definitions of "outstanding loans," "one borrower," "outstanding commercial loans," and "person." Accordingly, OTS staff does not anticipate any significant disparity in coverage.

As mentioned above, the Office will continue to closely monitor the recently proposed revisions to the OCC lending limit regulations. *See* 54 FR 43398 (Oct. 24, 1989). After reviewing this OCC proposal and considering any revisions made in any Final Rule issued by the OCC, the Office will issue further guidance to the extent necessary. Until such time as the OCC has completed its rulemaking, savings associations must comply with the 12 CFR part 32 definitions and aggregation rules as presently codified, with the minor revisions contained in today's rule.

(1) Loans and Extensions of Credit

Today's rule adopts the OCC's definition of "loans and extensions of credit" set forth at 12 CFR part 32.

(2) Definition of "person"/"One Borrower"/"Common Enterprise"

Today's rule references the OCC's definition of the term "person" and incorporates within this definition the term "financial institution" as presently defined at 12 CFR 561.19. This Final Rule deletes from the Interim Final Rule §§ 563.93(b)(2)(i) and 563.93(b)(2)(ii). These sections retained provisions from prior § 563.93 concerning loans made to limited partnerships that include a limited partner owning an interest of 10 percent or more and loans made to a limited partner owning an interest of 10 percent or more in a limited partnership. The Interim Final Rule provided that such loans would be aggregated with each other regardless of whether a "common enterprise" or "direct benefit" exists between the 10 percent limited partner and the partnership. Today's rule deletes this per se rule concerning loans made to 10 percent limited partners and loans made to limited

partnerships that include 10 percent limited partners and specifically applies the standards set forth at § 32.5 to such loans.

V. General Rule: Exceptions to the Section 84 Limits

Today's rule specifically incorporates the exceptions to the lending limitations set forth under 12 CFR part 32, which generally restate the lending limit exceptions expressed in the statute at 12 U.S.C. 84(c). These exceptions have been applicable to savings associations under the commercial loans to one borrower limitation at § 563.93 since 1983 and should be familiar to associations.

VI. Implementation of the Special Rules Provisions

A. Special Rule: The $500,000 Minimum

In today's rule, the Office provides regulations to implement the Special Rules provisions set forth under new section 5(u)(2) of the HOLA. Unlike the section 5(u)(1) General Limitation, however, the Special Rules provisions have no OCC analog. Thus, this is a new section specifically governing loans by savings associations.

These regulatory provisions are issued pursuant to the Office's authority under section 3(b)(2) (and section 4(a)(2)) of the HOLA, which provides that the Director of OTS "may prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out this Act and all other laws within the Director's jurisdiction." 12 U.S.C. 1462a(b)(2); *See also* 12 U.S.C. 1463(a)(2). The Office believes that several issues are left unresolved after a close reading of the Special Rules provision of the statute and after a thorough review of FIREA's legislative history. These issues include the interaction of these Special Rules limitations with the General Limitation set forth in 12 U.S.C. 84(a) (1) and (2), as well as the definition and meaning of several of the terms in this section.

Section 5(u)(2) provides that "notwithstanding" the General Limitation, a savings association may make loans to one borrower under one of two enumerated clauses: the first clause provides for loans for any purpose not to exceed $500,000; the second clause provides for loans to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus. From a review of the statute and legislative history, the Office does not believe that it was Congress's intent, nor is it consistent with safe and sound lending practice, to permit savings associations either: (a) To always make an additional loan of as much as $500,000 for any purpose over and above the General Limitation of 15 percent of unimpaired capital and surplus; or (b) to lend, *in addition to* the General Limitation amount, a full 30 percent or $30,000,000 to develop domestic residential housing units. Therefore, today's rule provides that loans made under either of these clauses may not be made in addition to the General Limitation of 15 percent of unimpaired capital and surplus.

This position is consistent with policy established under the Bank Board's prior loans to one borrower regulation. Section 563.93 imposed an aggregate lending limitation of the lesser of 10 percent of an insured institution's withdrawable accounts or an amount equal to the institution's regulatory capital. 12 CFR 563.93(b)(1). The regulation also provided that, despite this limitation, loans to one borrower could be made in excess of this limit (*i.e.*, as an alternate to this limit) provided that the sum of the institution's loans to one borrower did not exceed $500,000. The Board was of the view that "an alternative ceiling of $500,000 will permit more troubled institutions to make sizable loans that will help restore them to profitability." *See* 48 FR 23052 (May 23, 1983). In the agency's view, the $500,000 limit for loans for any purpose in section 5(u)(2) of the HOLA is intended to achieve the same result.

Thus, under today's rule, where a savings association's application of the General Limitation's 15 percent formula (or, under the transition rule, the 60 or 30 percent formulas) would result in that association only being able to lend an amount *less than* $500,000, the Special Rules paragraph (u)(2)(A)(i) will still enable the association to make total loans to one person, for any purpose, not to exceed $500,000. If applying the General Limitation's 15 percent formula renders a lending limit greater than $500,000, the association would naturally apply this greater amount, and the $500,000 loan limit for any purpose may not be employed. In short, if the General Limitation permits loans to one borrower in excess of $500,000, the section 5(u)(2)(A)(i) $500,000 exception is simply not relevant.[15]

Today's rule contains language clarifying that an association may employ this $500,000 exception for loans for any purpose to lend up to $500,000 to one borrower, even though such a loan may exceed the association's General Limitation. Thus, if an association's General Limitation calculation results in a $400,000 limit, the association may nevertheless lend up to $500,000 to Borrower A. If the association's capital position subsequently improves and its General Limitation calculation thereby increases to $600,000, the association may *not* lend an additional $600,000 to Borrower A. The Association may, however, lend an additional $100,000 to Borrower A, which would make the aggregate amount of outstanding loans owed to the association by Borrower A equal to the association's General Limitation of $600,000.

B. Special Rule for Loans to Develop Domestic Residential Housing Units

The same "notwithstanding" language that introduces the $500,000 exception similarly introduces the residential housing exception. Today's rule consistently interprets the meaning of this language by clarifying that the $30,000,000 or 30 percent of unimpaired capital and unimpaired surplus limit for loans to develop domestic residential housing units is not in addition to the General Limitation of 15 percent of unimpaired capital and unimpaired surplus.[16]

[15] It should be noted that, unlike the prior § 563.93 limitation which provided for a periodic, inflationary adjustment of the $500,000 limit in response to fluctuations in the Consumer Price Index, FIRREA does not explicitly provide for such an adjustment. For this reason, Thrift Bulletin 24, which addressed this periodic inflationary adjustment, will be rescinded.

[16] It should be noted that, because of the transition period established by today's rule, the lending authority set forth in section 5(u)(2)(A)(ii) will not actually provide *greater* lending authority for most *qualifying* savings associations until the transition period expires on December 31, 1991. The section 5(u)(2)(A)(ii)(II) Special Rule provides that a savings association must be in compliance with the fully phased-in capital standards of section 5(t) before it may avail itself of the authority to loan up to 30 percent of unimpaired capital and surplus to one borrower to develop domestic residential housing units. Today's rule similarly provides that a savings association must meet its fully phased-in capital standards in order to avail itself of the lending authority set forth in the temporary transition rule. Thus, it is unlikely that a qualifying savings association would seek OTS approval to engage in domestic residential housing lending under the Special Rule when it may loan as much as 60 percent of unimpaired capital and surplus to one borrower during the first year of the transition rule and 30 percent during the second year without obtaining Office approval.

The Office believes that this requirement is consistent with both safety and soundness and Congressional intent because it permits only those savings associations to employ the temporary transition that Congress has otherwise permitted to exceed the general 15 percent lending limit under the Special Rule provision.

As stated in today's rule, an association's ability to make loans to develop domestic residential housing units includes amounts loaned to a given "one borrower" under the General Limitation. For example, assume that Association A makes a loan to Borrower B in the amount of its General Limitation of $800,000 (15 percent). The residential housing exception does *not* permit Association A to lend an additional 30 percent (or $1,600,000) to Borrower B. The exception permits Association A to lend only an additional $800,000 to Borrower B, for an aggregate total of $1,600,000 (30 percent). Moreover, the extent to which Association A has availed itself of the additional 10 percent of unimpaired capital and unimpaired surplus limitation for loans fully secured by readily marketable collateral to make loans to Borrower B must also be subtracted from the $30,000,000 or 30 percent limit provided in the Special Rule.

Therefore, if a savings association avails itself of the residential housing exception, the exception's 30 percent or $30,000,000 limitation will serve as the uppermost limitation on lending to any one borrower. Moreover, it will serve as the uppermost limitation for lending to one borrower even if the full 15 percent of the association's General Limitation is applied entirely to commercial loans—the exception would permit only an additional 15 percent for loans to that borrower to develop domestic residential housing units. Of course, if an association does not avail itself of this exception, the limitation on loans to one borrower will simply be the General Limitation.[17] An interpretation appended to today's rule illustrates the operation of this higher lending limit.

Today's rule also sets forth a definition of the term "to develop domestic residential housing units." Neither the statute nor its legislative history provides guidance with respect to the definition of this term. Due to both the Office's and the industry's familiarity with the term "residential real estate" set forth under OTS regulation 12 CFR 541.23, the Office is proposing this definition as the appropriate reference for determining the meaning of "residential housing unit" under FIRREA's new lending limitation. As presently defined, this term includes homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate.

In applying this definition, associations will also be required to apply the present regulatory definitions of terms included within the § 541.23 definition of residential real estate, to include the definitions of "home" (§ 541.14), "combination of home and business property" (§ 541.4), "combination of residential real estate and business property involving only minor or incidental business use" (§ 541.3), and "single family dwelling" (§ 541.20). The term "domestic" as used in this section includes units located within the geographic area where OTS-regulated savings associations are chartered. This includes the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands.

The rule defines the term "to develop" to include the various combinations of phases necessary to produce housing units as an end product. This includes: (1) Acquisition, development, and construction; (2) development and construction; (3) construction; (4) rehabilitation; or (5) conversion. It is crucial that domestic residential housing units be the end product; the mere acquisition of real estate for holding or for later developing will not fulfill the definition for purposes of this Special Rule. Permanent financing of either individual units within a development or of a multi-unit complex is permissible provided that the financing is related to any of the aforementioned five combinations of phases. Permanent financing of existing housing units, whether single-family or multi-family, does not serve the purpose of the Special Rule and, therefore, is not excepted from the General Limitation.

In order for an association to avail itself of the residential housing unit Special Rule, the association must satisfy five prerequisites that are set forth in the statute and which have been reproduced in today's proposed regulation. The first of these prerequisites is that the purchase price (cash or cash equivalent) of each single family dwelling unit, the development of which is financed under the residential housing exception, does not exceed $500,000.

The term "single family dwelling unit" is defined presently under OTS regulation § 541.20 as "a structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undivided interest in the underlying real estate, including property owned in common with others which contributes to the use or enjoyment of the structure or unit." This existing definition is familiar to savings associations and is to be applied under the new section 5(u).

The Office has received several inquiries concerning the $500,000 purchase price requirement. Although legislative history provides little guidance on this issue, it is the Office's view that this statutory requirement is to apply literally, and that the actual final sales or purchase price of each single family dwelling unit financed under this clause cannot exceed $500,000 (cash or cash equivalent).

The second prerequisite to the use of the 30 percent or $30,000,000 exception for loans to develop domestic residential housing units is that the savings association be, and continue to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the HOLA, as amended. The term "fully phased-in capital standards" is defined as the standards that will be in effect as of January 1, 1995, at the expiration of all statutory and regulatory phase-in requirements set forth in 12 U.S.C. 1464(t) and 12 CFR 567.2, 567.5, and 567.9. If an association falls below this capital requirement, its authority to avail itself of the exception ceases; the Office will require that the association qualify under an order from the Director or his designee under section 5(u)(2)(A)(ii)(III) should the association return to compliance.[18] The OCC's "falling capital" policies set forth in the June 1988 Temporary Rule with request for comment, 53 FR 23752 (June 24, 1988), and the July 1989 Notice of Proposed Rulemaking, 54 FR 30054 (July 18, 1989), do not apply in this Special

[17] An association might not wish to avail itself of the residential development exception if its otherwise applicable General Limitation would be higher than the limit provided by the exception. For example, an association with a General Limitation higher than $30,000,000 would likely not wish to avail itself of the exception, since the $30,000,000 figure would operate as the uppermost limitation for all lending to one borrower *if* the residential exception were employed.

[18] If the association falls out of compliance with this capital requirement it can no longer avail itself of the lending limit for domestic residential housing unless and until it applies for and receives a new order from the Director. However, the Office will permit associations to continue funding a legally binding loan commitment made under section 5(u)(2)(A)(ii) if the association should fall out of compliance with its fully phased-in capital requirement, provided such binding commitment to the borrower was made when the association was in compliance.

Rules context (i.e., compliance with the fully phased-in capital under section 5(t) must be maintained).

The third prerequisite to the exception for loans to develop residential housing units is that the Director, by order, permit savings associations to use the higher limit. Such an order would not constitute a "waiver" of the loans to one borrower limitation but merely permission to use the section 5(u)(2)(A)(ii) Special Rule. Such order may contain additional requirements or set forth additional conditions or restrictions governing the exercise of the exceptional residential lending authority to one borrower. Moreover, the Director, or those agency officials to whom the Director delegates the authority to issue such orders, reserve(s) the right to rescind any such order, as well as the authority to generally impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the association under HOLA section 5(u)(3), as added by FIRREA.

The fourth prerequisite to the use of the additional lending limit for residential housing development is that all loans made under the $30,000,000 housing development exception, *to all borrowers,* may not in the aggregate exceed 150 percent of the saving association's unimpaired capital and surplus. The statute specifically states that this 150 percent limitation applies to "loans made under this clause." The Office interprets this provision to mean loans made under the exceptional authority of amended section 5(u)(2)(A)(ii), which provides for the maximum lending limit of 30 percent or $30,000,000 for the development of domestic residential housing units. Thus, neither loans made under the $500,000 exception for any purpose under section 5(u)(2)(A)(i), nor loans made under the authority of the General Limitation under section 5(u)(1) fall within this 150 percent limitation.

The following example illustrates the operation of the 150 percent limitation. In short, the example illustrates how a savings association might allocate loans that it has made to three different borrowers under the General Limitation and under the Special Rule. The General Limitation limits an association's loans to one borrower to 15 percent of unimpaired capital and unimpaired surplus, as reflected in the third column of the following table. Under the facts of each example below, the association has exceeded the 15 percent limitation, thus requiring that the association properly allocate loans in excess of that limit into the Special Rules category for residential development:

Borrower	Total loans—percent of unimpaired capital and unimpaired surplus	Percent under sec. 5(u)(1) general rule	Percent under sec. 5(u)(2)(A) special rule
A	20	15	5
B	26	15	11
C	30	15	15
Total percent counting towards the 150% limit			31
Total percent of remaining permissible lending to all borrowers under sec. 5(u)(2)(A) 150% limit			119

Finally, the fifth prerequisite to a savings association's use of the domestic residential housing exception to the General Limitation is that loans made by an association under this section must comply with all applicable loan-to-value requirements. In the Office's view, the requirement to adhere to "all applicable" loan-to-value requirements requires that all associations seeking to avail themselves of this exceptional lending authority apply the loan-to-value requirements applicable to Federally chartered savings associations. *See* 12 CFR 545.32(d). In light of the fact that this is exceptional lending authority greater than the General Limitation applicable to national banks, this uniform requirement will help to ensure that in providing this additional lending authority to promote the development of domestic residential housing units, the Office will not be approving disparately higher levels of risk concentration that could result from the application of differing loan-to-value requirements of many jurisdictions.

VII. Special Rule: Loans To Facilitate the Sale of Real Estate Owned

Section 5(u)(2)(B) also provides that a savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith shall not exceed 50 percent of the savings association's unimpaired capital and unimpaired surplus. Section 563.93(d)(4) of today's rule sets forth a definition of the term "loan," as well as a more restrictive unimpaired capital and unimpaired surplus limitation, in an effort to ensure consistency with policies of the OCC with respect to the disposition of association assets.

Significantly, today's rule establishes a definition of the term "loans" as used in the statute's phrase "loans to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith," which is to be used solely for purposes of these new lending limits. As set forth in the rule, this term does not include an association's financing of the sale of such real property acquired where the association merely takes a purchase money mortgage note from the purchaser. This treatment of purchase money mortgages taken through the sale of real estate acquired is consistent with the treatment the Comptroller applies to such financings under section 84. In written interpretations, the OCC has historically excluded such financings to facilitate the sale of other real estate owned from the ambit of the section 84 lending limits, although loans (*i.e.,* new funds) extended to a purchaser to improve such property must comply with section 84.

This provision will serve to establish lending limit parity between savings associations and national banks with respect to such financings of real estate owned. If purchase money note financing were not excluded from the scope of this limitation, savings associations would clearly be disadvantaged, since such financings by national banks would *not* be covered by the section 84 lending limitations with respect to savings association, while similar financings by savings associations would ostensibly be

subject to the statutory 50 percent limitation.[19]

Today's rule thus provides that the term "loans," as used in section 5(u)(2)(B), does not include an association's financing of the sale of such acquired property where the association merely takes a purchase money mortgage note from the purchaser, provided: (1) No new funds are advanced by the association to the borrower; and (2) the association is not placed in a more detrimental position as a result of the sale (*i.e.*, the association is not in a worse position holding the note than holding the real estate). These requirements will demand a more fact-specific inquiry by the association, as well as by the Office's examination staff, and will necessitate that the association provide appropriate evidence that these requirements have been considered and met in each transaction.

Provided these requirements are met, such financings will not constitute a loan to finance the sale of real property acquired as referenced under section 5(u)(2)(B), nor a loan or extension of credit as defined under 12 CFR part 32. However, *all* other financings or loans to facilitate the sale of such foreclosed property, as well as any loans that constitute the advancement of new funds (*e.g.*, a loan to a purchaser to make improvements) will be subject to the section 5(u)(1) General Limitation, or the section 5(u)(2) $500,000 limit, if applicable.

Although the Office believes that this action is necessary to ensure that its lending limit treatment is consistent with that of the OCC with respect to the sale of such assets, the Office remains concerned that the 50 percent limitation set forth in section 5(u)(2)(B) of FIRREA is not sufficiently restrictive to ensure safe and sound policy. For example, while a national bank's purchase money note financing of the sale of a bank asset would not be subject to the 15 percent of unimpaired capital and unimpaired surplus limitation set forth at section 84, the bank's extension of new money would fall within this 15 percent limitation. Under section 5(u)(2)(B), as interpreted in today's rule, similar financing by a savings association would likewise not fall within the lending limitation, but an extension of new money in a sale of association real property would be governed by a 50 percent limitation. In short, the statute suggests an upper limit on the amount of new money a savings association may loan to one borrower in connection with the sale of association real property that is more than three times greater than the limit applicable to a national bank's extension of new money.

The Office believes that, in order to protect the safety and soundness of savings associations, it should apply a more stringent limitation on the amount an association may loan to one borrower in connection with the financing of the sale of real property acquired in satisfaction of debts previously contracted than the absolute maximum permitted under section 5(u)(2)(B). Thus, today's rule is consistent with the OCC's rule with respect to the sale of such assets and provides that a savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed the General Limitation of 15 percent of unimpaired capital and unimpaired surplus. The extension of new money and all other loans (again, specified purchase money note financing is excluded) to one borrower to finance the sale of such association real estate will only be permitted up to a limit identical to the 15 percent limit applicable to national banks. Moreover, the transition rule enunciated in today's rule (the 60 percent/30 percent phase-in) does *not* apply to such loans; the 15 percent limitation still applies.

This 15 percent limitation is not *in addition to* the General Limitation of 15 percent of unimpaired capital and unimpaired surplus; in short, such loans to finance the sale of association real property, when aggregated with all other loans to that borrower, cannot exceed the General Limitation.

VIII. Investment Securities

Previously, a Federal association could lawfully invest in, sell, or hold commercial paper and corporate debt securities of any one issuer consistent with specific limitations identified at 12 CFR 545.75. Section 545.75(b)(3) provides that an association's total investments in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, together with commercial loans, are subject to the loans to one borrower limitations set forth at 12 CFR 563.93(b)(2). Today's rule retains the limitation set forth in § 563.93(b)(2) as the limitation on the amount a savings association may invest in the commercial paper and corporate debt securities of any one issuer. Today's rule also permits savings associations to invest an additional 10 percent of unimpaired capital and surplus in certain highly rated obligations as discussed below.

A. Corporate Debt Securities and Commercial Paper

The extent to which a national bank may invest in securities is governed by 12 U.S.C. 24, which provides that a national bank may purchase for its own account investment securities of any one obligor or maker in an amount not to exceed 10 percent of the bank's capital stock paid in and unimpaired and 10 percent of its unimpaired surplus. The OCC's regulations define an investment security as a marketable obligation in the form of a bond, note, or debenture which is commonly referred to as an investment security. Not included in this definition are investments which are predominantly speculative in nature. 12 CFR 1.3(b).

This limitation on the amount of investment securities a national bank may purchase for its own account is separate from the limitation on the amount the bank may loan to one borrower set forth at 12 U.S.C. 84. Generally for purposes of distinguishing between a "loan" for purposes of 12 U.S.C. 84 and an "investment security" for purposes of 12 U.S.C. 24, the OCC determines whether a "loan" is the result of direct negotiations between a borrower and a lender, or the lender's agent, and whether the loan terms are specialized to meet the interests of the lender and the needs of the borrower. An "investment security," on the other hand, typically has standardized terms which can be compared to the terms of other market offerings. Loans made by a national bank are subject to the section 84 lending limits while a bank's

[19] The OCC has stated that the taking of a purchase money mortgage note to facilitate the sale of *any* bank asset (not just real property) would not fall within the section 84 limitations, provided the above conditions are met. Thus, a less careful reading of the section 5(u)(3) limitation as applying to financings where the association merely takes a purchase money note without an advance of new funds would lead to the following incongruous result: financings to facilitate the sale of *real property* would fall within the section 5(u)(2)(B) limitation, similar financings to facilitate the sale of other bank assets would fall within neither the 50 percent limitation nor the General Limitation. (The section 5(u)(2)(B) Special Rule only addresses *real property* assets held by the association; other assets held by the association fall within the General Limitation (*i.e.*, section 84).) Because the OCC has stated that the purchase note financing of bank assets falls outside section 84, real property financings would have a 50 percent limitation, while other bank asset financings would have no loans to one borrower limitation. Such a less careful reading of the statute would produce a result that is both illogical and inconsistent with the treatment of such financings by the OCC.

purchase of investment securities is subject to section 24. FIRREA applies to savings associations only the loans to one borrower limits of section 84 and does not apply the section 24 limitation on the amount of investment securities of one issuer a national bank may purchase.

In order to protect the safety and soundness of savings associations, however, the Office has retained the prior limitation on the amount a savings association may invest in the corporate debt securities of any one issuer. Accordingly, the limitation on the amount of commercial loans a savings association may make to one borrower formerly set forth at § 563.93(b)(2) continues as the applicable limit on the amount an association may invest in the corporate debt securities of a single issuer. Under this rule, a savings association must add any loans it has made to a borrower with any corporate debt securities held by the association that were issued by the same borrower and the aggregate amount is subject to the association's General Limitation.

The provision in today's rule is identical to the prior Bank Board limitation on the amount of corporate debt securities of any one issuer a savings association may hold. Prior to FIRREA, the Bank Board's lending limits consisted of an aggregate limit and a commercial limit, with the OCC's lending limitation at 12 U.S.C. 84 serving as the commercial limit. A savings association's investment in corporate debt securities was deemed to be an "outstanding commercial loan" as defined under § 563.93(a)(3)(i). Consequently, section 545.75(b)(3) incorporated the commercial loan limitation under § 563.93 as the appropriate limitation on the amount a savings association could invest in the corporate debt securities of any one issuer.

FIRREA, however, requires the OTS to apply the section 84 lending limits to all loans, so the former "commercial" limit under § 563.93 is now the General Limitation. Since the lending limits set forth in section 84 already governed the extent to which a savings association could invest in the corporate debt securities of one issuer, today's rule does not impose a new limitation on investment in corporate debt on one issuer, but merely clarifies the regulatory references. Thus, today's rule incorporates a technical amendment to § 545.75 consistent with this analysis.

A savings association's total investment in commercial paper will be similarly treated. The OCC regulations governing loans to one borrower define the term "loans and extensions of credit" as any direct or indirect advance of funds, including obligations of makers and endorsers arising from the discounting of commercial paper, to a person. 12 CFR 32.2(a). Under today's rule, the commercial paper held by a savings association is included within the definition of "loans and extensions of credit" and continues to be subject to the loans to one borrower limitations. Thus, the aggregate amount of loans, corporate debt securities, and commercial paper of the same borrower or issuer held by a savings association is subject to the 15 percent of unimpaired capital and surplus limitation set forth at 12 U.S.C. 84.

B. Rated Obligations

In promulgating its Interim Final Rule, the Office revoked savings associations' additional investment authority in rated obligations that existed in the former § 563.93 loans to one borrower regulation. Savings associations could formerly invest in securities of one issuer beyond the general limitation applicable to both commercial loans to and investments in the same entity, provided that the securities were highly-rated.

An association could formerly invest the greater of 1 percent of assets or $1 million in the commercial paper of one issuer, if rated in the highest category by at least two nationally recognized rating services, or in corporate debt securities of one issuer, if rated in the two highest categories by a nationally recognized rating service. An association could also formerly invest up to the greater of one-half of one percent of assets or $500,000 in the commercial paper of one issuer if rated in the two highest categories by at least two nationally recognized rating services, or in corporate debt securities of one issuer, if rated in the three highest categories by a nationally recognized rating service. The aggregate investment in issues of one entity under both of these additional investment provisions could not exceed the greater of 1 percent of assets or $1 million.

In revoking this former authority, the Office reasoned that since this additional investment authority was linked to a percentage of assets, investments made under this authority could exceed the total capital of an undercapitalized association. Similarly, since the total was also linked to an absolute dollar amount, $1 million, investments made under this authority could exceed total capital for small savings associations, and again, undercapitalized associations. To preserve the safety and soundness of savings associations by limiting concentrations of loans and investments, the Office revoked this authority in its Interim Final Rule.

After reviewing the comments concerning the revocation of the additional authority of savings associations to invest in rated obligations, the Office is reinstating the authority set forth in former § 563.93, although with some modifications. In particular, this Final Rule amends the former provision concerning investments in rated obligations by restricting a savings association's investment in certain highly rated obligations to an amount not to exceed 10 percent of unimpaired captial and surplus. This authority is in addition to any loans an association may make to the same borrower. The Office has established a limitation based on unimpaired capital and surplus because it is concerned that a limitation based on percentage of assets or an absolute dollar amount may result in unsafe concentrations of loans and investments to one issuer.

This Final Rule provides that, notwithstanding the general limitation to one borrower of 15% of unimpaired capital and unimpaired surplus for aggregate loans and investments, a savings association may invest up to 10 percent of its unimpaired capital and unimpaired surplus in one issuer's commercial paper, if rated in the highest services, or in corporate debt securities if rated in the two highest categories by a nationally recognized rating service. The former clause that permitted additional investment in commercial paper and corporate debt securities in lesser quality categories is not reinstated with this Final Rule.

IX. Transitional Policies for Existing Loans and Loan Commitments

A. Loan Commitments

Two Thrift Bulletins, TB 32 and TB 32-1, provided specific guidance with respect to the treatment of loan commitments and outstanding loans made before the enactment of FIRREA. As stated in these documents, a legally binding loan commitment that was within the association's lending limit when made and that was entered into—but not funded—prior to FIRREA's August 9, 1989 enactment could be funded post-enactment and be subject to the pre-existing loans to one borrower limitation under 12 CFR 563.93 rather than the more restrictive FIRREA limitation. This transition policy, however, contains several caveats.

First, this conclusion assumes that the loan commitment was within the association's lending limit when made

and was legally binding prior to FIRREA's enactment. Under this transition policy it is incumbent upon the association to demonstrate that the commitment represents a legally binding commitment to fund. For example, the OCC's transition rules under 12 CFR 32.7 require either a written agreement or other file documentation evidencing the commitment. Where doubt exists as to the legally binding nature of the commitment, supervisory personnel may require a written legal opinion of the association's counsel.

In general, loan commitments for which the prospective borrower has paid no fee to the thrift should be reviewed closely to determine if a binding commitment exists. Such agreements typically contain broad provisions permitting the lenders to decline to fund on subjective grounds that effectively render the commitment unenforceable. In the absence of payment of such a fee, the association must overcome with convincing evidence the strong presumption that the commitment is not legally binding.

Advances under *renewals* or *extensions* of such pre-enactment commitments must conform with the new lending limitations set forth under FIRREA if the renewal or extension of the commitment is made on or after FIRREA's date of enactment. Accordingly, an association may renew only the funded portion of a loan commitment if this portion exceeds the association's lending limit at the time of renewal. Upon renewal, this renewed portion effectively converts to a nonconforming term loan. This position is consistent with the OCC's transition rules and interpretations governing the renewal of loan commitments. *See* 12 CFR 32.7(d).

Finally, when a savings association is requested to enter into an outstanding binding commitment that may exceed the association's lending limit now or in the future, prudent lending practice would dictate that the association take precautions to permit escape from such a dilemma. Such actions include a protective clause in the commitment that would release the association from its obligation if funding the loan would result in an overline. This is particularly important with respect to *new* commitments entered into by savings associations during the transition period established by this rule, which is discussed in greater detail below.

B. Outstanding Loans: Renewals

This previously announced transitional measure also addresses loans outstanding prior to enactment, and renewals and extensions of those loans post-enactment. It is the OTS's view that, for lending limit purposes, a renewal of a loan will generally not be regarded as the equivalent of a new loan at the time of renewal, *provided:* (1) No new funds are advanced by the association to the borrower; and (2) a new borrower is not substituted for the original obligor. Provided these conditions are met, the renewal of such a loan will not result in a violation of the new statutory limitation; rather, the loan will be deemed "nonconforming." This position is consistent with the longstanding policy of the OCC as expressed in its written interpretations of applicable statutory and case law. *See also* 54 FR 43398, 43401 (Oct. 24, 1989).

Because the renewal of a nonconforming loan presents an opportunity to bring the loan into conformance, the association must, *prior* to such a renewal, make every effort to bring the loan into conformance with the new limitation. For example, the association should attempt to have the debtor partially repay the loan or obtain another institution's nonrecourse participation in the loan to bring it into lending limit compliance. It is incumbent upon the association to demonstrate with appropriate written evidence that such efforts have been made. The OTS will not consider the renewal made in accordance with these principles to be a violation of law. However, circumstances that indicate a deliberate purpose to evade the law and to extend unauthorized lines of credit will be deemed to violate the statutory limitations made applicable by FIRREA and expose the directorate to liability.

The OTS is also specifically adopting the OCC's policy regarding the restructuring of loans. The restructuring of a loan, to include extending repayment terms, altering interest rates, or obtaining additional security, will be treated as a renewal rather than a new loan and extension of credit, provided the original obligor is not released (and, as in the case with all loan renewals, no new funds are advanced). *Id.* at 43401. This policy reflects the OCC's historical treatment of such restructurings for lending limit purposes. Savings associations should be advised, however, that supervisory personnel will carefully review such renewals and that the Office reserves the right to impose more stringent restrictions if it is determined that such modifications are not consistent with safe and sound operation.

X. Miscellaneous: Calculation of Limit and Maintenance of Records

Under today's rule, the amount of an association's "unimpaired capital and unimpaired surplus" must be calculated as of the association's most recent periodic report (monthly or quarterly) filed with the OTS prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the association knows, or has reason to know, based on transactions or events actually completed, that its level of unimpaired capital and unimpaired surplus has changed by a material amount, upward or downward, subsequent to the filing of the report. As the Bank Board noted in 1985 in incorporating this provision, a "transaction or event" requiring a "negative" adjustment would include, for example, a supervisory directive to establish a specific loss allowance or notice of default on a loan. *See* 50 FR 45095 (Oct. 30, 1985).

Today's rule also retains provisions of former § 563.93(c) pertaining to an association's maintenance of records. The provision in today's rule, however, substitutes "the greater of $500,000 or 5 percent of unimpaired capital and unimpaired surplus of such association" for the "$250,000 or 2 percent of regulatory capital of such institution, whichever is greater" recordkeeping trigger of the former rule, and makes other technical changes. Today's rule also deletes the provision of former § 563.93(c) that requires documentation in all cases where outstanding loans to one borrower exceed $1,000,000. Prudent loan underwriters may wish, however, to document compliance with the legal lending limits for all significant loans, even loans for amounts less than the aforementioned thresholds. Such documentation facilitates review by regulators seeking to determine a savings association's compliance with the legal lending limits during on-site examinations.

XI. Transition Rule Phasing-In the New Lending Limitations

Today's rule establishes a temporary transition period, to expire on December 31, 1991, that phases in the application of the national bank lending limits for well-capitalized, qualifying associations.

A. Authority and Justification

Since FIRREA's enactment, the OTS has engaged in a thorough review and analysis of the section 5(u) lending limits, the sparse legislative history for this section, the interrelation of this provision with other sections of FIRREA, and the interrelation of these

new limits with other OTS regulations. In both formal and informal advice to savings associations and other interested parties, the Office has been careful not to take steps that could thwart Congressional intent, as expressed in the Act, that the national bank lending limits be made applicable to savings associations. This ongoing review of the Act and its legislative history for authority to provide a transitional measure, and an analysis of the need for and appropriate form of transition relief, has been conducted by legal and policy staffs, respectively.

With regard to the question of legal authority to provide a transition rule, several conclusions can be drawn, despite the paucity of clear legislative history. First, although the Act made the section 84 national bank limits applicable to savings associations, Congress did not amend the National Bank Act either to make the OCC the primary regulator of savings associations or to provide the Comptroller with express authority to draft lending limit regulations to apply particularly to savings associations. Second, several provisions within FIRREA expressly provide the OTS with broad rulemaking authority.

Section 3(b)(2) of the HOLA provides that the Director of OTS is authorized to "prescribe such regulations and issue such orders as the Director may determine to be necessary for carrying out this Act and all other laws within the Director's jurisdiction." Section 4(a)(2) of the HOLA also provides that the Director "may issue such regulations as the Director determines to be appropriate to carry out the responsibilities of the Director or the Office." Finally, section 4(c) of the HOLA provides that all OTS regulations "shall be no less stringent than those established by the Comptroller of the Currency for national banks."

This broad grant of rulemaking authority to the OTS, the primary Federal regulator of savings associations, is entirely consistent with this agency's charge to ensure that savings associations are appropriately regulated and examined, that they provide credit for housing, and that they are operated in a safe and sound manner. As discussed above, the statutory provisions on lending limits for savings associations and their legislative history do not evidence Congressional intent that the OCC become the primary Federal regulator for savings associations. Nor does the section 5(u) lending limit provide that the imposition of the national bank *limits* was intended to supersede FIRREA's broad grant of rulemaking authority under sections 3 and 4. Section 5(u) does manifest an intent to make the national bank limits applicable to savings associations ("shall apply to savings associations"), that such limits are to apply in the same manner and to the same extent that they apply to national banks, and that the preexisting savings association lending limits are not to be applied post-enactment (the Act's Conference Report provides that the "limits are incorporated by reference and are self-executing").

Thus, although neither the statute nor the Conference Report expressly nullifies OTS's broad rulemaking authority, the statute clearly evidences Congressional intent that, in the general lending limit context, such authority must be exercised in a manner that applies the national bank limits "in the same manner and to the same extent" as they apply to national banks. In short, section 5(u)(1) circumscribes the Office's general rulemaking authority with respect to the General Limitation, but of course does not similarly affect this authority under the Special Rules.

Moreover, any lending limit regulations prescribed by the OTS must also comply with the requirement of section 5(c) that its regulations and policies governing safety and soundness be no less stringent than those of the OCC. Thus, the discretion the OTS exercises in promulgating lending limit regulations and a transition rule must comport with both the "in the same manner and to the same extent" restriction and the comparable stringency requirement.

The Office believes that this interpretation of its authority to phase in the application of the section 84 lending limits to savings associations is consistent with the manner and extent to which the OCC applies these limits to national banks. Importantly, the Office has devised a transitional measure that requires all savings associations, effective August 9, 1989, to abandon the former Federal Home Loan Bank Board regulatory limits that predated FIRREA, consistent with Congressional intent as expressed in section 5(u)(1) and in the Conference Report. This transitional measure phases in the national bank lending limits calculated on the basis of the same definition of unimpaired capital and unimpaired surplus that applies to national banks. Of course, savings associations that are unable to use the transition period because they do not meet the necessary prerequisites are strictly governed by the national bank limits as of FIRREA's enactment.

Since the enactment of FIRREA, the Office has received several inquires from parties who object to the imposition of national bank lending limits to savings associations. While the statute provides that savings associations are subject to the same lending limits as national banks, the Act's imposition of significantly lower lending limits has affected the financing of projects begun before FIRREA's enactment. Phases of projects that were originally planned and that were considered viable in many cases cannot be funded in the future by well-capitalized, qualifying associations. In some cases, funding of projects by such associations had to be halted in the middle of a phase, making repayment of funds already disbursed unlikely without the lender repossessing the project.

A transition rule phasing in the legal lending limits would provide these well-capitalized, qualifying savings associations with some relief in dealing with problems resulting from the sudden imposition of the national bank lending limits. First, it would provide these qualifying savings associations with greater opportunity to establish loan participation networks to serve the financing needs of major borrowers. This would foster continuation of profitable relationships. Qualifying savings association that plan to serve the credit needs of major borrowers in the future should actively seek competent lending partners during the transition period if the association's post-transition lending limit will not be sufficient to accommodate such borrowers.

Second, it would in many cases permit funding to continue on projects begun before FIRREA's enactment where disbursements were halted due to imposition of the new lending limits. For example, an association may have made a nonresidential construction loan prior to FIRREA, secured by real property, totaling $6,000,000 or 60 percent of the association's unimpaired capital and unimpaired surplus as measured by today's standards. Assume that the loan matured after enactment of FIRREA with only $4,000,000 disbursed. Since this amount represents 40 percent of the association's unimpaired capital and unimpaired surplus, and exceeds the national bank lending limits (15 percent under section 5(u)(1)), no additional funds could be disbursed to that borrower. However, if the association qualified to avail intself of the transitional lending limit of 60 percent of unimpaired capital and unimpaired surplus, then the unfunded total of

$2,000,000 could be advanced (as discussed in greater detail *infra* and in the appended Interpretation, provided the borrower had no other outstanding loans from the association, and provided further that the qualifying association complies with the transition rule's aggregate limit on all loans, as well as other prerequisites).

As another example, assume that a savings association entered into a revolving line of credit with a borrower pre-FIRREA to fund development of a residential housing project. Assume that the line of credit totaled $6,000,000 or 60 percent of the association's unimpaired capital and unimpaired surplus as measured by today's standards. If the revolving line of credit matured post-FIRREA with $4,000,000 outstanding, then the amount outstanding could be renewed under OTS's current renewal policy. This policy maintains that, provided every effort has been made to bring the loan into compliance, loans that were legal when made pre-FIRREA can be renewed post-FIRREA if there is no advance of new funds and no substitution of obligors. Since the outstanding balance in this example represents 40 percent of the association's capital, the line may be renewed but it effectively converts to a term loan. Until the line is repaid to a level less than $1,500,000 or 15 percent of the association's unimpaired capital and unimpaired surplus (or to a level below the 30 percent Special Rule for loans to develop domestic residential housing, if applicable), no additional funds can be advanced to the borrower.

However, continuing with this example, if the association qualifies for the additional lending authority available under a transition rule, the unfunded balance of $2,000,000 could be renewed or advanced prior to December 31, 1990, at which time the phase-in lending limit declines to 30 percent of unimpaired capital and surplus. Furthermore, prior to December 31, 1990, the line could retain its revolving feature. That is, any funds repaid by the borrower could be readvanced during this time period, provided that such advances did not exceed 60 percent of the association's unimpaired capital and unimpaired surplus at the time of the advance (and again, were permitted under the 300 percent aggregate limit and complied with all other requirements).

The rule would also provide some relief in cases where a association entered into a residential construction loan prior to FIRREA that exceeded 60 percent of its current unimpaired capital and unimpaired surplus. For example, assume that an association entered into a construction loan pre-FIRREA totaling $8,000,000 or 80 percent of its current unimpaired capital and unimpaired surplus. Assume also that the loan matures with only $4,000,000 or 40 percent of the association's unimpaired capital and unimpaired surplus disbursed. Without a transition rule, the association could renew the $4,000,000 portion consistent with the "every effort" requirements (outlined above under "VIII"), but could not advance any additional funds to the borrower based on its general lending limitation of 15 percent of unimpaired capital and unimpaired surplus (or possibly the 30 percent Special Rule limit).

If the association qualifies to exercise the 60 percent lending authority available under the transition rule, however, it may advance an additional $2,000,000 to the borrower. The amount loaned to this borrower would then be equal to the limit of 60 percent of the association's unimpaired capital and unimpaired surplus. The remaining undisbursed balance of $2,000,000 may not be funded. Similarly, during the transition period, a savings association may *not* fund a pre-FIRREA revolving line of credit that expires post-FIRREA in an amount that exceeds the transitional lending limit.

B. Description of the Temporary Transition Rule

Today's Rule provides that during the period beginning August 9, 1989 through December 31, 1990, qualifying associations' total loans and extensions of credit to one borrower cannot exceed 60 percent of unimpaired capital and unimpaired surplus. During the period beginning January 1, 1991 through December 31, 1991, qualifying associations' loans and extensions of credit to one borrower may not exceed 30 percent of unimpaired capital and unimpaired surplus. After December 31, 1991, all loans and extensions of credit of one borrower by qualifying associations cannot exceed the limits set forth in paragraphs (c)(1), (c)(2), and (d) of § 563.93. All other, nonqualifying savings associations that cannot use the temporary transition authority must comply with the new § 563.93 lending limitations beginning August 9, 1989.

Since loan concentrations represent a genuine safety and soundness concern, only the best managed savings associations with superior capital levels will be permitted to avail themselves of the expanded lending authority available under this transition rule. In order to utilize this transition authority, savings associations must meet the regulatory definition of a "qualifying association." First, in order, to meet this definition, a savings association must meet its fully phased-in capital requirement; that is, it must be in compliance with the capital standards that will be in effect as of January 1, 1995 at the expiration of all statutory and regulatory phase-in requirements set forth in 12 U.S.C. 1464(t) and 12 CFR 567.2, 567.5, and 567.9. Second, such association should not be identified as an association in need of more than normal supervision by supervisory personnel. Associations that satisfy the qualification criteria to use the lending authority of the transition rule may avail themselves of the expanding lending authority; there will not be an application and approval process *per se*. Instead, associations seeking to use this temporary transition authority will need to complete a certification form to be provided by the District Director that indicates to supervisory personnel the association's intent to use the transition lending authority. Once this certification form has been provided by the qualifying association, the association can avail itself of the expanded lending authority. The District Director may request additional information and reserves the right to restrict an association's right to use the expanded transition lending authority generally, or to restrict its use with respect to particular loans or extensions of credit, for safety and soundness reasons.

This temporary transition authority does not apply to all loans and extensions of credit of a qualifying savings association. In short, today's temporary transition authority provides two types of transition under a 60 percent/30 percent phase-in schedule: (1) Transition for new loans to develop domestic residential housing units where the final purchase price of each single family dwelling unit the development of which is financed under the transition authority does not exceed $500,000; and (2) transition to permit loans and extensions of credit to complete the development of residential and nonresidential projects incomplete as of FIRREA's enactment where the qualifying association had advanced funds, prior to enactment and secured by real property, under a loan or extension of credit. With regard to the former transition, the Office has determined that safety and soundness dictates that new lending, unrelated to an incomplete project predating FIRREA's enactment, be limited to the types of lending Congress specifically recognized as requiring special treatment: loans to develop domestic residential housing units. Such

residential development lending, with the restrictions imposed by the Special Rules provisions and with several additional restrictions imposed under the transition rule, should not pose an undue concentration of credit risk under today's transitional limits.

The transition rule also permits limited lending to complete residential and nonresidential projects begun before, but incomplete at the time of, FIRREA's enactment. The purpose of this provision is to provide well-capitalized, qualifying associations with authority to, *if prudent and consistent with safety and soundness,* provide limited funding to complete such projects for which the association had provided funding prior to FIRREA's enactment. This prior funding must have been secured by real property, to insure that only those loans that were formerly governed by the previous 100 percent of regulatory capital loans to one borrower limitation (not the prior 15 percent limitation for commercial loans) would benefit from this transition lending authority. The Office emphasizes that qualifying associations must carefully consider whether providing funds to complete such pre-FIRREA projects is consistent with safe and sound practice and considered risk analysis. Office examination staff will carefully review loans made to complete such projects to insure that all conditions set forth in today's rule are met, that such projects were clearly underway but incomplete as of enactment, and that limited funding to complete such projects is demonstrated to be economically prudent and consistent with safety and soundness.

The only loans permitted under this transition authority—whether new residential development loans or loans to complete a pre-FIRREA project—are those loans and extensions of credit that: (1) Are fully secured by a first lien on real estate; (2) comply with the applicable loan-to-value requirements that apply to Federal savings associations; (3) provide that the borrower is personally liable for the full indebtedness arising from the loan or extension of credit; and (4) receive prior approval of the qualifying association's Board of Directors.

With regard to the first of these requirements, § 545.32 of the Office's regulations describes when a loan is made on the security of real estate. *See* 12 CFR 545.32(c). As for the second requirement, the applicable loan-to-value requirements for savings associations are set forth at 12 CFR 545.32(d). The third requirement reflects Office concern that during this temporary transition period, qualifying associations might make loans and extensions of credit that might present particular concentration of credit risk to the association should the collateral decline in value and thus not fully secure the obligation of the borrower to the association.

To protect against a potential deficiency, the Office is requiring that the loan documents reflect that the borrower is personally liable on the debt, to ensure that the association maintains full recourse against the borrower for the debt. In essence, this constitutes a modification of the definition of "loans and extensions of credit" for purposes of the temporary transition authority. Although the Rule defines a loan or extension of credit to mean "any direct or indirect advance of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of a person," the requirement stated under this transition rule is to ensure that the association has full recourse against more than just specific property pledged by or on behalf of the borrower.

The Office also remains concerned that associations might try to enter into unreasonably lengthy commitments to abuse the additional lending authority available under the transition rule. Thus, commitments entered into during the transition period that are inconsistent with an association's general lending policies and practices may be considered unsafe and unsound. Moreover, qualifying savings associations should be aware that OTS's risk-based capital standards require an association to hold capital against most commitments exceeding one year. Requiring capital to be held for nonearning off-balance sheet items serves to deter commitment practices that seek to artificially extend the transition period.

Today's transition rule also contains several other clarifications. First, this transition authority does not extend to "new" money loaned in the sale of real property acquired in satisfaction of debts previously contracted. As described in greater detail above, the prior position that a "financing" falls outside the lending limits is unchanged, provided specific requirements are met, as is the determination that new money loaned in such transactions will be governed by the 15 percent of unimpaired capital and unimpaired surplus limit (or the $500,000 Special Rule limit for any purpose). Notwithstanding the transition rule, the 15 percent limitation must still be applied to such new loans.

Second, it must be noted that the Director, for safety and soundness reasons, may restrict the availability of, or impose additional restrictions on the use of, this temporary transition authority. Factors that the Director will consider in determining whether a savings association is abusing the additional lending authority provided in today's rule include whether the association uses the additional lending authority in the transition rule to engage in types of lending that are not permitted by the transition rule and that differ from the association's previous lending practices. Also, in monitoring compliance with today's rule, the Director will closely scrutinize the lending practices of savings associations that have recently experienced an unusually rapid growth in assets or that have experienced a change in ownership or a change in officers or directors.

Third, today's temporary transition measure imposes an aggregate limit on the overall amount of lending that a qualifying savings association makes to *all* borrowers by imposing a limit on the aggregate amount of loans and extensions of credit exceeding 15 percent of unimpaired capital and unimpaired surplus. The rule provides that the amount of a qualifying association's loans to all borrowers that exceeds 15 percent of unimpaired capital and unimpaired surplus shall not, in the aggregate, exceed 300 percent of unimpaired capital and unimpaired surplus during the period from August 9, 1989 through December 31, 1990, and shall not exceed 150 percent of unimpaired capital and unimpaired surplus during the period beginning January 1, 1991 through December 31, 1991.

For example, assume that a qualifying association's total unimpaired capital and unimpaired surplus equals $10 million. During the first phase of the transition period, this association may make loans to one borrower up to 60 percent of unimpaired capital and unimpaired surplus, or $6 million. However, under the aggregate limitation for qualifying associations in today's rule, the amount of all loans made by this association that exceeds 15 percent of unimpaired capital and unimpaired surplus shall not exceed 300 percent of unimpaired capital and unimpaired surplus or, in this example, $30 million.

Therefore, in this example, if the association made a $6 million loan to Borrower A and a $4 million loan to Borrower B, each of these loans would comply with the 60 percent transition

limit since neither exceeds $6 million. To calculate the amount of each loan that counts against the qualifying association's 300 percent, $30 million aggregate limit on loans to all borrowers, the association would count only the amount of each loan that exceeds the 15 percent limit that would govern if there were no transition rule. (Similar to FIRREA's imposition of a 150 percent aggregate limit for residential development loans under the section 5(u)(2) Special Rules, this 300 percent aggregate limit is intended only to addresses that portion of each loan made in excess of the general 15 percent limitation.)

Thus, of the $6 million loan to Borrower A, only $4.5 million (the amount greater than 15 percent) will count against the 300 percent aggregate limit. Similarly, of the $4 million loan to Borrower B, only $2.5 million will count against the 300 percent aggregate limit. Thus, these two loans would result in $7 million being attributed to the qualifying association's 300 percent, $30 million aggregate limit.

Several points require emphasis. First, this 300 percent aggregate limit (which, between January 1, 1991 and December 31, 1991, becomes a 150 percent limit) will be applied to the amount of a qualifying association's loans to all borrowers that exceeds 15 percent of unimpaired capital and unimpaired surplus, *including* loans made under authority of the section 5(u)(2) Special Rule for loans to develop domestic residential housing units. However, consistent with the exclusion of the "first" 15 percent from the aggregate limit, a qualifying association's loans made under the authority of the additional 10 percent lending limit for loans secured by readily marketable collateral under paragraph (c)(2) of today's rule will not be included in the 300 (and later, 150) percent aggregate limitation. Moreover, should a qualifying association employ the paragraph (d)(1) $500,000 exception (because the transition amount would not permit a loan up to that amount), such $500,000 loan will also not fall within the aggregate limit.

Lastly, a qualifying association must be mindful that loans that are counted in the 300 percent aggregate limit will be carried forward and counted under the subsequent 150 percent aggregate limit if outstanding. It must also be noted that loans counted in the 300 percent limit also count against the 150 percent aggregate limit for the development of domestic residential housing units set forth at § 563.93(d)(3)(iv) (and vice versa). For example, assume that, as of December 31, 1990, a qualifying association has made loans and extensions of credit to all borrowers which, when properly calculated under the aggregate limit, equal 270 percent of unimpaired capital and unimpaired surplus. On January 1, 1991, the assocation's aggregate limit falls under the transition rule to 150 percent of unimpaired capital and unimpaired surplus. Because the qualifying association's outstanding loans to all borrowers that were made pursuant to the transition rule will exceed the 150 percent limit by 120 percent (270 minus 150), the association will be unable to make any additional loans pursuant to the transition rule or pursuant to the domestic residential housing exception until its aggregate loan amount decreases to less than 150 percent of unimpaired capital and unimpaired surplus.

XII. Authorization To Impose More Stringent Restrictions

Today's rule also restates the statute's express authorization under section 5(u)(3) that the Director may always impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association. This provision authorizes the Director to apply lending limitations more stringent than the section 84 limitations to particular savings associations or to restrict the authority of particular "qualifying associations" to use the lending limitations set forth in the transition rule.

XIII. Interpretations

FIRREA expressly requires that the section 84 lending limits apply to savings associations in the same manner and to the same extent as they apply to national banks. The application of these national bank limits, although continuing significant elements of the Office's (and Bank Board's) prior lending limit rule, presents many issues that require careful analysis and interpretation of the new statutory limits themselves, the Comptroller's regulations, as well as the Office's historical experience applying lending limitations, in order for the OTS to apply the section 84 limits to savings associations.

The agency is mindful of its duty to protect the safety and soundness of the financial institutions within its charge, and will appropriately exercise its statutory rulemaking authority and interpretive authority to ensure that safe and sound lending practices are established and followed. In addition to applying its more circumscribed rulemaking authority to apply the national bank limits in a manner consistent with the Comptroller's application of such limits, the OTS will more broadly execise its rulemaking and interpretive authority to implement the Special Rules provisions and any more strict lending limit provisions set forth by the Office. The Office anticipates that, at a minimum, it may need to exercise its rulemaking and interpretive authority to address questions regarding the application of the national bank lending limits to savings associations that are not specifically resolved by the Comptroller's codified regulations and interpretations. The Office anticipates that, as a matter of policy, it will give substantial weight to the interpretive opinions of the OCC, including letter opinions, that have not been adopted through notice-and-comment rulemaking procedures and will regard them as strong evidence of safe and sound banking practices. These latter opinions, however, are not deemed to be legally binding on savings associations.

Administrative Procedure Act

The Office finds that there exits good cause for waiving the notice and comment and delay of effective date provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, for this Final Rule. As the Office noted in issuing the Interim Final Rule, 55 FR 11294, 11307 (March 27, 1990), FIRREA's implementation of the national bank limits and Special Rule provisions, and the uncertainty generated by the interaction of these provisions with the prior lending limit regulations presented an acute need for the Office, at that time, to issue interim, binding guidance. However, is issuing the Interim Rule, the Office specifically solicited comment for a sixty-day comment period. These comments have been carefully considered and are summarized elsewhere in today's Final Rule. Because this Interim Rule solicited comments on all aspects of the lending limit issue for an appropriate time period, and because these comments have been carefully considered and revisions have been made in today's Final Rule in response to such comments, the Office believes that the purposes of the section 553 requirement for notice of proposed rulemaking have been achieved.

The Office also finds that good cause exists for waving the delay of effective date provisions. *See* 5 U.S.C. 553(d)(3). An important element of today's Final Rule is the inclusion of a transition measure, which provides a phasing-in of

the national bank limits within a specified time frame. As this time frame began with the date of enactment of FIRREA, with the initial transition period closing December 31, 1990, the Office believes it imperative that this transition rule be effective immediately in order that affected associations may be provided with meaningful opportunity to take advantage of this transitional measure. A delay in effective date would, in short, defeat the purpose of the transition, which is intended to apply timely, phased-in imposition of the new lending limit requirements. Moreover, the Office believes that this and other revisions and clarifications contained in today's Final Rule are presently needed by associations in order to enable them to conduct day-to-day lending operations in a prudent manner.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

Executive Order 12291

The Director of the Office of Thrift Supervision has determined that this Final Rule does not constitute a "major rule" within the meaning of Executive Order 12291. Consequently, a Regulatory Impact Analysis is not required.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfer, Flood insurance, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Currency, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V, parts 545 and 563 of the Code of Federal Regulations, as set forth below:

Subchapter C—Regulations For Federal Savings Associations

PART 545—OPERATIONS

1. The authority citation for Part 545 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amanded (12 U.S.C. 1464); sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 267 (12 U.S.C. 1828).

2. Amend § 545.75 by revising paragraph (b)(3) to read as follows:

§ 545.75 Commercial paper and corporate debt securities.

* * * * *

(b) *Limitations.* * * *

(3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any one person or entity affiliated with such issuer, together with other loans shall not exceed the limitations contained in § 563.93(c) of this chapter.

* * * * *

Subchapter D—Regulations Applicable to All Savings Associations

PART 563—OPERATIONS

3. The authority citations for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10 as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

4. Section 563.93 is revised to read as follows:

§ 563.93 Lending limitations

(a) *Scope.* This section applies to all loans and extensions of credit made by savings associations and their operation subsidiaries. This section does not apply to loans made by a savings association to its operating subsidiaries or to its subsidiaries and affiliates, as those terms are defined in OTS regulations implementing sections 10 and 11 of the Home Owners' Loan Act.

(b) *Definitions.* In applying these lending limitations, savings associations shall apply the definitions and interpretations promulgated by the Office of the Comptroller of the Currency consistent with 12 U.S.C. 84. *See* 2 CFR part 32. In applying these definitions, pursuant to 12 U.S.C. 1464, savings associations shall use the terms "savings association," "savings associations," and "savings association's" in place of the terms "national bank" and "bank," "banks," and "bank's," respectively. For purposes of this section:

(1) The term *one borrower* has the same meaning as the term "person" set forth at 12 CFR part 32. It also includes, in addition to the definition cited therein, a "financial institution" as defined at 12 CFR 561.19.

(2) The term *company* means a corporation, partnership, business trust, association, or similar organization and, unless specifically excluded, the term "company" includes a "savings association" and a "bank".

(3)(i) For purposes of paragraph (b)(7) of this section, a savings association shall be deemed to have *control* over another company if:

(A) The savings association directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other company;

(B) The savings association controls in any manner the election of a majority of the directors or trustees of the other company; or

(C) The savings association would be deemed to control the company under § 574.4(a) of this subchapter, or presumed to control the company under § 574.4(b) of this subchapter, and in the latter case, such control has not been rebutted; and

(ii) Notwithstanding any other provision of this section, no savings association shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity, except any company:

(A) That is controlled directly or indirectly, by a trust or otherwise, by or for the benefit of shareholders who beneficially or otherwise control, directly or indirectly, by a trust or otherwise, the savings association or any company that controls the savings association; or

(B) In which a majority of its directors or trustees constitute a majority of the persons holding any such office with the savings association or any company that controls the savings association.

(4) *Contractual commitment to advance funds* has the meaning set forth in 12 CFR part 32;

(5) *Loans and extensions of credit* has the meaning set forth in 12 CFR part 32, and includes investments in commercial paper and corporate debt securities. The Office expressly reserves its authority to deem other arrangements that are, in substance, "loans and extensions of credit" to be encompassed by this term;

(6) The term *loans* as used in the phrase "Loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith" does not include an association's taking of a purchase money mortgage note from the purchaser *provided that:*

(i) No new funds are advanced by the association to the borrower; and

(ii) The association is not placed in a more detrimental position as a result of the sale;

(7) The term *operating subsidiary* with respect to a savings association means a company:

(i) That is engaged solely in activities of the type that a Federal savings association may directly conduct under section 5(c) of the Home Owners' Loan Act, 12 U.S.C. 1464(c);

(ii) Which the savings association controls; and

(iii) The voting stock of which is eligible to be held only by savings associations.

(8) A *qualifying association* is a savings association that:

(i) Is, and continues to be, in compliance with the fully phased-in capital standards, as defined in paragraph (b)(13) of this section;

(ii) Is not otherwise identified as an association in need of more than normal supervision by supervisory personnel; and

(iii) Has completed and submitted to the District Director a written certification form, to be supplied by the District Director, that indicates the association's intention to use the temporary transition lending authority set forth in paragraph (g) of this section, and has provided any other additional information the District Director may require.

(9) *Readily marketable collateral* has the meaning set forth in 12 CFR part 32;

(10) *Residential housing units* has the same meaning as the term *residential real estate* set forth in 12 CFR 541.23. The term *to develop* includes the various phases necessary to produce housing units as an end product, to include: acquisition, development and construction; development and construction; construction; rehabilitation; or conversion. The term *domestic* includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands;

(11) *Single family dwelling unit* has the meaning set forth in 12 CFR 541.20;

(12) A *standby letter of credit* has the meaning set forth in 12 CFR Part 32;

(13) *Unimpaired capital and unimpaired surplus* means "capital and surplus" as that term is defined in 12 CFR 3.100. Savings associations may also include within "unimpaired capital and unimpaired surplus" net worth certificates issued pursuant to former section 12 U.S.C. 1729(f)(5). The term *fully phased-in capital standards* means the capital standards that will be in effect as of January 1, 1995 at the expiration of all statutory and regulatory phase-in requirements set forth in 12 U.S.C. 1464(t) and 12 CFR 567.2, 567.5, and 567.9.

(c) *General limitation.* Section 5200 of the Revised Statutes (12 U.S.C. 84) shall apply to savings associations in the same manner and to the same extent as it applies to national banks. This statutory provision and lending limit regulations and interpretations promulgated by the Office of the Comptroller of the Currency pursuant to a rulemaking conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* (including the regulations appearing at 12 CFR part 32, but not including 12 CFR 32.7) shall apply to savings associations in the same manner and to the same extent as these provisions apply to national banks:

(1) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and not fully secured, as determined in the same manner as determined under 12 U.S.C. 84(a)(2), by collateral having a market value at least equal to the amount of the loan or extension of credit shall not exceed 15 percent of the unimpaired capital and unimpaired surplus of the association.

(2) The total loans and extensions of credit by a savings association to one borrower outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (c)(1) of this section.

(d) *Exceptions to the general limitation*—(1) *$500,000 exception.* If a savings association's lending limitation calculated under paragraph (c)(1) of this section, is less than $500,000, notwithstanding this limitation in paragraph (c)(1) of this section, such savings association may have total loans and extensions of credit, for any purpose, to one borrower outstanding at one time not to exceed $500,000.

(2) *Statutory exceptions.* The exceptions to the lending limits set forth in 12 U.S.C. 84 and 12 CFR Part 32 are applicable to savings associations in the same manner and to the extent as they apply to national banks.

(3) *Loans to develop domestic residential housing units.* A savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all amounts loaned under the authority of the General Limitation set forth under paragraphs (c)(1) and (c)(2) of this section, *provided that:*

(i) The final purchase price of each single family dwelling unit the development of which is financed under paragraph (d)(3) of this section does not exceed $500,000;

(ii) The savings association is, and continues to be, in compliance with its fully phased-in capital standards, as defined in paragraph (b)(13) of this section;

(iii) The Director, by order, and subject to any conditions that he may impose in such order, permits savings associations to use the higher limit set forth under paragraph (d)(3) of this section;

(iv) Loans made under this paragraph (d)(3) of this section to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; *and*

(v) Such loans comply with the applicable loan-to-value requirements that apply to Federal savings associations.

The authority of a savings association to make a loan or extension of credit under this exception ceases immediately upon the association's failure to comply with any one of the requirements set forth in this paragraph (d)(3) or any condition(s) set forth in a Director's order under paragraph (d)(3)(iii) of this section.

(4) Notwithstanding the limit set forth in paragraphs (c)(1) and (c)(2) of this section, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by:

(i) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services in the highest category; or

(ii) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in one of the two highest categories by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security.

(e) *Loans to finance the sale of REO.* A savings association's loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted for in good faith shall not, when aggregated with all other loans to such borrower, exceed the General Limitation in paragraph (c)(1) of this section.

(f) *Calculating compliance and recordkeeping.* (1) The amount of an association's unimpaired capital and unimpaired surplus pursuant to paragraph (b)(13) of this section shall be calculated as of the association's most recent periodic report (monthly or quarterly) required to be filed with the OTS prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the association knows, or has reason to know, based on transactions or events actually completed, that such level has changed significantly, upward or downward, subsequent to filing of such report.

(2) If a savings association or operating subsidiary thereof makes a loan or extension of credit to any one borrower, as defined in paragraph (b)(1) of this section, in an amount that, when added to the total balances of all outstanding loans owed to such association and its operating subsidiary by such borrower, exceeds the greater of $500,000 or 5 percent of unimpaired capital and unimpaired surplus, the records of such association or its operating subsidiary with respect to such loan shall include documentation showing that such loan was made within the limitations of paragraphs (c) and (d) of this section; for the purpose of such documentation such association or operating subsidiary may require, and may accept in good faith, a certification by the borrower identifying the persons, entities, and interests described in the definition of one borrower in paragraph (b)(1) of this section.

(g) *Temporary transition authority to exceed the general limitation.* (1) Notwithstanding the 15, 10, and 30 percent lending limitations set forth in paragraphs (c)(1), (c)(2), and (d)(3), respectively, of this section, a qualifying association may make total loans and extensions of credit to one borrower not to exceed 60 percent of unimpaired capital and unimpaired surplus during the period beginning August 9, 1989 through and including December 31, 1990; and not to exceed 30 percent of unimpaired capital and unimpaired surplus beginning January 1, 1991 through and including December 31, 1991; *provided that,* all such loans and extensions of credit are:

(i) To develop domestic residential housing units, and the final purchase price of each single family dwelling unit the development of which is financed under the transition authority of paragraph (g)(1) of this section does not exceed $500,000; or

(ii) To complete the development of a residential or nonresidential project for which, prior to August 9, 1989, the qualifying association had advanced funds, secured by real property, pursuant to a loan or extension of credit.

(2) All loans and extensions of credit to one borrower made under paragraphs (g)(1)(i) and (g)(1)(ii) of this section shall:

(i) Be fully secured by a first lien on real estate;

(ii) Comply with the applicable loan-to-value requirements that apply to Federal savings associations;

(iii) Provide that the borrower is personally liable for the full indebtedness arising from the loan or extension of credit; and

(iv) Receive prior approval by the savings association's Board of Directors.

(3) This temporary transition lending authority includes, and is not in addition to, the lending authority set forth under paragraphs (c)(1), (c)(2), and (d)(3) of this section. This transaction authority does *not* extend to a qualifying association's loans to finance the sale of real property acquired in satisfaction of debts previously contracted; such loans are governed by paragraph (e) of this section.

(4) The amount of a qualifying association's loans and extensions of credit to all borrowers in excess of 15 percent of unimpaired capital and unimpaired surplus shall not, in aggregate, exceed 300 percent of such association's unimpaired capital and unimpaired surplus during the period beginning August 9, 1989 through December 31, 1990; and shall not exceed 150 percent of the qualifying association's unimpaired capital and unimpaired surplus during the period beginning January 1, 1991 through December 31, 1991.

(5) The 60 percent transition lending authority set forth in this paragraph (g) for qualifying associations expires December 31, 1990; the 30 percent transition lending authority set forth in this paragraph (g) expires December 31, 1991. After December 31, 1991, loans and extensions of credit cannot be made under the authority of this paragraph (g) and shall comply with all other paragraphs of this section.

(6) The Director retains the discretion to restrict, for reasons of safety and soundness, a savings association's authority to engage in expanded lending activities pursuant to this transitional rule.

(h) *More stringent restrictions.* The Director may impose more stringent restrictions on a savings association's loans to one borrower if the Director determines that such restrictions are necessary to protect the safety and soundness of the savings association.

Appendix to § 563.93—Interpretations

Section 563.93–100 Interrelation of General Limitation With Exception for Loans To Develop Domestic Residential Housing Units

The § 563.93(d)(3) exception for loans to one person to develop domestic residential housing units is characterized in the regulation as an "alternative" limit. This exceptional $30,000,000 or 30 percent limitation does not operate *in addition to* the 15 percent General Limitation or the 10 percent additional amount an association may loan to one borrower secured by readily marketable collateral, but serves as the uppermost limitation on a savings association's lending to any one person once an association employs this exception. An example will illustrate the Office's interpretation of the application of this rule:

Example: Savings Associations X's lending limitation as calculated under the 15 percent General Limitation is $800,000. If Association X loans to Y $800,000 for commercial purposes, Association X cannot lend Y *an additional* $1,600,000, or 30 percent of capital and surplus, to develop residential housing units under the paragraph (d)(3) exception. The (d)(3) exception operates as an uppermost limitation on all lending to one borrower (for associations that may employ this exception) *and includes any amounts loaned to the same borrower under the General Limitation.* Association X, therefore, may lend only an additional $800,000 to Y, provided the paragraph (d)(3) prerequisites have been met. The amount loaned under the authority of the General Limitation ($800,000), when added to the amount loaned under the exception ($800,000), yields a sum that does not exceed the 30 percent uppermost limitation ($1,600,000).

This result does not change even if the facts are altered to assume that some or all of the $800,000 amount of lending permissible under the General Limitation's 15 percent basket is not used, or is devoted to the development of domestic residential housing units. In other words, using the above example, if Association A loans $400,000 to Y for commercial purposes and $300,000 to Y for residential purposes—both of which would be permitted under the Association's $800,000 General Limitation—the Association's remaining permissible lending to Y would be: $100,000 under the General Limitation, plus another $800,000 to develop domestic residential housing units if the Association meets the paragraph (d)(3) prerequisites. (The latter is $800,000 because in no event may the total lending to Y exceed 30 percent of unimpaired capital and unimpaired surplus). If the Association did not loan to Y the remaining $100,000 permissible under the General Limitation, its permissible loans to develop domestic residential housing units under paragraph (d)(3) would be $900,000 instead of $800,000 (the total loans to Y would still equal $1,600,000).

In short, under the paragraph (d)(3) exception, the 30 percent or $30,000,000 limit will always operate as the uppermost limitation, unless of course the association

does not avail itself of the exception and merely relies upon its General Limitation.

Section 563.93–101 Interrelationship Between the General Limitation and the 150 Percent Aggregate Limit on Loans to All Borrowers To Develop Domestic Residential Housing Units

The Office has already received numerous questions regarding the allocation of loans between the different lending limit "baskets," *i.e.*, the 15 percent General Limitation basket and the 30 percent Residential Development basket. In general, the inquiries concern the manner in which an association may "move" a loan from the General Limitation basket to the Residential Development basket. The following example is intended to provide guidance:

Example: Association A's General Limitation under section 5(u)(1) is $15 million. In January, Association A makes a $10 million loan to Borrower to develop domestic residential housing units. At the time the loan was made, Association A had not received approval under a Director order to avail itself of the residential development exception to lending limits. Therefore, the $10 million loan is made under Association A's General Limitation.

In June, Association A receives authorization to lend under the Residential Development exception. In July, Association A lends $3 million to Borrower to develop domestic residential housing units. In August, Borrower seeks an additional $12 million commercial loan from Association A. Association A cannot make the loan to Borrower, however, because it already has an outstanding $10 million loan to Borrower that counts against Association A's General Limitation of $15 million. Thus, Association A may lend only up to an additional $5 million to Borrower under the General Limitation.

However, Association A may be able to reallocate the $10 million loan it made to Borrower in January to its Residential Development basket provided that: (1) Association A has obtained authority under a Director's order to avail itself of the additional lending authority for residential development and maintains compliance with all prerequisites to such lending authority; (2) the original $10 million loan made in January constitutes a loan to develop domestic residential housing units as defined; and (3) the housing unit(s) constructed with the funds from January loan remain in a stage of "development" at the time Association A reallocates the loan to the domestic residential housing basket. The project must be in a stage of acquisition, development, construction, rehabilitation, or conversion in order for the loan to be reallocated.

If Association A is able to reallocate the $10 million loan made to Borrower in January to its Residential Development basket, it may make the $12 million commercial loan requested by Borrower in August. Once the January loan is reallocated to the Residential Development basket, however, the $10 million loan counts towards Association's 150 percent aggregate limitation on loans to all borrowers under the residential development basket (section 5(u)(2)(A)(*ii*)(*IV*)).

If Association A reallocates the January loan to its domestic residential housing basket and makes an additional $12 million commercial loan to Borrower, Association A's totals under the respective limitations would be: $12 million under the General Limitation; and $13 million under the Residential Development limitation. The full $13 million residential development loan counts toward Association A's aggregate 150 percent limitation.

Section 563.93–102 Interrelationship Between the General Limitation, the 150 Percent Aggregate Limit on Loans to All Borrowers to Develop Domestic Residential Housing Units, and the 300 Percent Aggregate Limit on Loans to All Borrowers Pursuant to the Transition Rule

Generally, pursuant to § 563.93(g), qualifying savings associations may loan up to 60 percent of unimpaired capital and unimpaired surplus to one borrower prior to December 31, 1990 to develop domestic residential housing units or to complete other projects entered into prior to FIRREA. During this period, all loans made to all borrowers pursuant to this transitional authority shall be added together and subject to an aggregate limitation of 300 percent of the association's unimpaired capital and unimpaired surplus. During the period beginning January 1, 1991 and ending on December 31, 1991, the transition rule permits qualifying savings associations to loan up to 30 percent of unimpaired capital and unimpaired surplus to one borrower to develop domestic residential housing units or to complete other projects entered into prior to FIRREA. Loans made pursuant to the transition rule during this period shall be subject to an aggregate ceiling of 150 percent of unimpaired capital and unimpaired surplus. The following example is intended to assist qualifying savings associations in determining whether loans made during the transition period are consistent with this rule:

Example: Assume that Association Y is a qualifying savings association with unimpaired capital and surplus of $10 million. Prior to FIRREA, Association Y and Borrower A entered into a $5 million loan, secured by real estate, for the purpose of constructing a hotel. On September 1, 1990, Borrower A requests an additional $1 million loan from Association Y to complete the project that had been financed with the previous $5 million loan.

Prior to December 31, 1990, Association Y may loan up to 60 percent of unimpaired capital and surplus ($6 million) to one borrower to develop domestic residential housing units or to complete other projects entered into prior to FIRREA. Thus, Association Y may loan an additional $1 million to Borrower A to complete construction of the hotel (resulting in a total of $6 million (60 percent) outstanding to Borrower A), provided that all new funds advanced to Borrower A are secured by a first lien on real estate, that Borrower A is personally liable for the additional funds advanced, that the loan complies with the applicable loan-to-value requirements, and that Association Y's Board of Directors approves the loan. This additional $1 million loan to Borrower A counts against Association Y's 300 percent aggregate limit on loans made to all borrowers pursuant to the transition rule.

On October 15, 1990, Borrower B requests from Association Y a $4 million loan to develop domestic residential housing units and a $1.5 million dollars loan to begin development of a commercial property. Borrower B has an outstanding mortgage loan with Association Y for $500,000. Association Y may *not* make the $1.5 million commercial loan to Borrower B because this loan, when aggregated with Borrower B's outstanding loan with Association Y, exceeds Association Y's 15 percent general limit ($1.5 million). The transition rule does not permit a savings association to make a new *commercial* real estate loan to a borrower that, when added to all outstanding loans to the same borrower, exceeds the 15 percent general limit.

Association Y may, however, make the $4 million loan to Borrower B to develop domestic residential housing units provided the loan meets all of the requirements set forth at § 563.93(g). The $4 million loan, when added to the $500,000 outstanding loan to Borrower B, does not exceed Association Y's transitional lending limit of 60 percent of unimpaired capital and surplus ($6 million). Of the amount loaned to Borrower B, $3 million (the amount of all loans to Borrower B that exceeds Association Y's general lending limit of $1.5 million) counts against Association Y's 300 percent aggregate limit on loans made to all borrowers pursuant to the transition rule.

On January 1, 1991, the amount of Association Y's loans to all borrowers in excess of 15 percent of unimpaired capital and surplus that had been made pursuant to the transition rule equals 200 percent of unimpaired capital and surplus. Because this amount exceeds the aggregate limit of 150 percent of unimpaired capital and surplus that becomes effective on January 1, 1991, Association Y may not use the additional lending authority provided under the transitional rule *or* provided under the domestic residential housing exception set forth at § 563.93(d)(3) to make additional loans in excess of 15 percent of unimpaired capital and surplus to *any* borrower.

During the remainder of 1991, Association Y may use the transition rule to make loans to one borrower in excess of 15 percent of unimpaired capital and surplus only if the aggregate amount of outstanding loans made pursuant to the transition rule to *all* borrowers decreases to an amount less than 150 percent of unimpaired capital and surplus. If, subsequent to the December 31, 1991 expiration of the transition rule, the amount of outstanding loans made to all borrowers pursuant to the transition rule is greater than 150 percent of unimpaired capital and surplus, Association Y may *not* use the additional lending authority provided by the domestic residential housing exception set forth at § 563.93(d)(3). Association Y may use the § 563.93(d)(3) lending authority only if the amount of its outstanding loans to *all* borrowers made pursuant to the transition rule is less than 150 percent of unimpaired capital and unimpaired surplus.

Dated: June 26, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6; Amdt. 5]

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Interim final rule.

SUMMARY: This interim final rule changes the present regulations governing the Small Business Investment Company (SBIC) Program (13 CFR part 107) in order to implement amendments made to the Small Business Investment Act, as amended (Act), (15 U.S.C. 661 *et seq.*) by the Small Business Administration [SBA] Reauthorization and Amendment Act of 1988, Public Law 100-590 and by the 1990 (SBA) Appropriations Act, Public Law 101-162.

The first substantive amendment requires that Federal, State or local government funds invested in a licensed SBIC (Licensee) prior to November 21, 1989, the effective date of Public Law 101-162, be included in such Licensee's Private Capital solely for regulatory purposes.

The second substantive amendment primarily implements the objective of Public Law 101-162 that financial assistance to a Licensee from SBA by means of SBA's guarantee of the Licensee's debentures (Leverage) be extended to those companies licensed pursuant to section 301(d) of the Act (section 301(d) Licensees) in the same manner that Leverage is now made available to those companies licensed pursuant to section 301(c) of the Act (other Licensees), but it also includes language that reflects SBA's discretionary authority to sell outstanding three percent preferred securities back to the issuer at a price less than the par value thereof; and that sets forth SBA's authority to pay an interest rate subsidy for the first five years of the term of a debenture issued by a section 301(d) Licensee and sold with SBA's guarantee as part of a pool of guaranteed debentures issued by section 301(d) Licensees and other Licensees. In addition, this amendment includes a regulatory change mandated by Public Law 100-590, which reflects SBA's consistent practice with respect to the periodic scheduling of public offerings of fractional undivided interests in pools of SBA-guaranteed SBIC debentures.

The third substantive amendment implements the requirement that preferred securities purchased by SBA after November 20, 1989 carry a dividend rate of four percent per annum, and that such securities be redeemed within fifteen years from the date of issuance.

DATES: This interim final regulation is effective July 10, 1990. Comments must be received on or before August 9, 1990.

ADDRESSES: Comments may be addressed to Joseph L. Newell, Director, Office of Investment, U.S. Small Business Administration, 1441 "L" St., NW., room 810, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, U.S. Small Business Administration, 1441 "L" St., NW., room 810, Washington, DC 20416. Telephone (202) 653-6584.

SUPPLEMENTARY INFORMATION: SBA's 1990 Appropriations Act, Public Law 101-162, included several amendments to the Small Business Investment Act. One of these amendments would permit an SBIC that has received, prior to November 21, 1989, Federal funds from any source other than SBA, or State or local government funds, to include such funds in the computation of its "Private Capital", but only for the purpose of determining whether such Licensee is in compliance with SBA regulations. Accordingly, this regulation amends the present definition of "Private Capital" set forth in § 107.3 by adding the statutorily-mandated change, and by stating the definition in a new format for easier reading. The definition of "Private Capital" for purposes of licensing or Leverage eligibility remains unchanged.

Section 107.201(a) is amended to comply with the objectives of Public Law 101-162. Prior to the enactment of that law, debenture Leverage was entended to section 301(d) Licensees under a procedure that differed from the procedure used to fund other Licensees. The debentures of other Licensees were guaranteed by SBA, pursuant to section 303(b) of the Act, and made part of a pool. Certificates evidencing an undivided fractional interest in the pool were then sold to the investing public. In contrast, the debentures of section 301(d) Licensees were purchased and held by SBA. Even though section 303(c) of the Small Business Investment Act (Act) authorized SBA to guarantee debentures issued by section 301(d) Licensees, the use of this authority was impractical because such debentures enjoyed a reduced rate of interest for the first five years of their term, pursuant to section 317 of the Act. The section 317 subsidy (a three percentage point reduction below the average yield of marketable U.S. obligations with comparable maturities) made these debentures unattractive to private investors.

Public Law 101-162's amendments to the Act extend the procedures presently used for funding other Licensees to the Leveraging of section 301(d) Licensees. Section 303(d) of the Act now authorizes SBA to make payments that reduce the interest rate paid by section 301(d) Licensees on debentures guaranteed pursuant to section 303(c) of the Act for the first five years of the debentures' term. During that period, section 301(d) Licensees pay interest at a rate that is three percentage points lower than the rate applicable to debentures issued by other Licensees participating in the same pool; the difference (the section 303(d) subsidy) is paid by SBA. The primary effect of the amendments to § 107.201(a)(1) is to extend the debenture Leverage application procedures presently followed by other Licensees to section 301(d) Licensees.

As amended, § 107.201(a)(1) includes language that cuts off, at 200 percent of Private Capital, the access of a section 301(d) Licensee to section 303(d) subsidized debenture Leverage. Section 303(d) of the Act, as amended, says in relevant part "The aggregate amount of debentures with interest rate reductions as provided in this subsection or in section 317 which may be outstanding at any time from any such company shall not exceed 200 per centum of the [Private Capital] of such company."

SBA does not interpret the quoted language to require any section 301(d) Licensee that presently has outstanding subsidized debentures in excess of 200 percent of Private Capital to redeem such debentures prior to the maturity date thereof.

SBA interprets the word "or" in the quoted language as a disjunctive. Accordingly, any section 301(d) Licensee that now has outstanding debentures subsidized under section 317 in an amount equal to 200 percent or more of its Private Capital will not, for that reason alone, be precluded from obtaining SBA's guarantee of debentures with a section 303(d) subsidy. Nor will any section 301(d) Licensee that hereafter has outstanding debentures with a section 303(d) subsidy in an amount equal to 200 percent of its Private Capital be precluded, for that reason alone, from selling its debentures to SBA with a section 317 subsidy.

Although the apparent effect of the quoted language of section 303(d) of the Act, and of the regulation promulgated

thereunder, would seem to be a denial of subsidized third- or fourth-dollar debenture Leverage to section 301(d) Licensees, few, if any, section 301(d) Licensees will be so affected. Nothing in the Act, as amended, or in the regulations, changes SBA's authority to leverage corporate section 301(d) Licensees through the purchase of preferred securities. Consequently, the only section 301(d) Licensees that may be unable to draw down subsidized Leverage in excess of 300 percent of Private Capital will be (1) those corporate Licensees with an investment portfolio that meets the requirements of § 107.202 (debenture Leverage in excess of 300 percent of Private Capital), but not those of § 107.205(d) (preferred securities Leverage in excess of 100 percent of Private Capital); (2) corporate section 301(d) Licensees that prefer qualification as Subchapter S corporations over access to preferred securities Leverage from SBA; or (3) section 301(d) Licensees organized as limited partnerships. SBA knows of no section 301(d) Licensees that would fall under the first description; SBA knows of only one section 301(d) Licensee that falls under the second description; and no section 301(d) License has yet been issued to a limited partnership.

Although this rule provides for the purchase of debentures by SBA with a section 317 subsidy as an alternative to SBA's guarantee of debentures with a section 303(d) subsidy, this alternative will be available only to those section 301(d) Licensee whose debentures have previously been guaranteed by SBA with a section 303(d) subsidy, in an aggregate amount equal to 200 percent of Private Capital. All section 301(d) Licensees that are eligible to obtain subsidized debenture Leverage are presently eligible to obtain it with a section 303(d) subsidy, and it is SBA's present intention, with respect to future debenture Leverage, to entertain only applications for a gurantee with the section 303(d) subsidy.

The requirement presently set forth in § 107.201(a)(1), that a limited partnership Licensee applying for Leverage furnish SBA with a ruling from the Internal Revenue Service to the effect that it qualifies as a partnership for tax purposes, is modified to reflect the fact that the Service no longer routinely issues such rulings. SBA is now willing to accept an opinion of independent counsel not involved in the drafting of the limited partnership agreement.

Section 107.201(a)(2) is amended by the addition of two new paragraphs, and by certain editorial changes in the present regulation, which will be redesignated as § 107.201(a)(2)(i).

Paragraph (i) reflects editorial changes that limit its coverage to preferred securities Leverage, since the primary procedure for applying for subsidized debenture Leverage is to be set forth in § 107.201(a)(1).

New paragraph (ii) generally carries over the present procedure by which a section 301(d) Licensee applies for the purchase of its debentures with a section 317 subsidy, but only as an alternative subsidized debenture funding procedure for those section 301(d) Licensees that have already sold debentures in an aggregate amount equal to 200 percent of Private Capital, with SBA's guarantee and section 303(d) subsidy.

New paragraph (iii) implements the authority conferred upon SBA by section 303(f) of the Act to sell back to the issuer, on such terms as SBA shall determine in its sole discretion, preferred securities purchased by SBA prior to November 21, 1989. The standards guiding SBA's discretion are taken verbatim from the Act, as amended by Public Law 101–162.

The first paragraph of § 107.201(c)(2) is redesignated as paragraph (i) and amended to reflect SBA's authority under section 303(d) of the Act to pay an interest subsidy on debentures issued by section 301(d) Licensees that are included in a pool of guaranteed debentures.

A new paragraph (ii) states that SBA will issue guarantees of debentures at three month intervals, or at shorter intervals if such action is justified. The language of this paragraph follows the mandate of Public Law 100–590 and reflects SBA's long-standing practice. The succeeding paragraphs of § 107.201(c)(2) are accordingly redesignated.

Redesignated paragraph (vi) of § 107.201(c)(2) is changed by substituting the word "formation" for "information", thereby correcting a typographical error.

In conformity with the requirements for section 303(c)(5) of the Act, § 107.205(b)(3)(i) is amended by the changing of the present reference to a dividend rate of three percent to a four percent dividend rate on preferred securities purchased by SBA after November 20, 1989. The amended regulation also preserves the three percent divided rate on preferred securities purchased on or before November 20, 1989.

Paragraph (ii) of § 107.205(b)(3), as presently set forth, is deleted, since it will henceforth be a part of § 107.201(a)(2). In its place, a new paragraph (ii) is inserted, setting forth the requirement that preferred securities purchased by SBA on or after November 21, 1989 must be redeemed by the issuer. In view of the difference between the language of section 303(f) of the Act, embodied in § 107.201(a)(2)(iii), and that of section 303(c)(5), SBA interprets the language of section 303(c)(5) to require redemption at a price not less than the par value of such securities.

SBA does not believe Congress intended mandatorily-redeemable preferred securities to remain outstanding for more than fifteen years, if the next sale of guaranteed debentures followed the mandatory redemption date. By submitting a technically defective request for SBA's guarantee of debentures to be issued in redemption of such preferred securities, at the next scheduled debenture sale following the fifteenth anniversary of the issuance, a section 301(d) Licensee would obtain a benefit—the use of the funds evidenced by preferred securities for an additional period—that would be denied a section 301(d) Licensee that submitted a satisfactory debenture application. Accordingly, even though section 303(c)(5) of the Act speaks of mandatory redemption "in 15 years from the date of issuance" of such preferred securities, § 107.205(b)(3)(ii) says "not later than fifteen years from the date of issuance" and requires that section 301(d) Licensees that wish to redeem outstanding redeemable preferred securities through the issuance of SBA-guaranteed debentures apply for the issuance and guarantee of their debentures in the public offering scheduled for the last date before the fifteenth anniversary of the issuance of the preferred securities in question. The approval of any such request is discretionary.

Executive Orders 12291 and 12612, Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and Paperwork Reduction Act, 44 U.S.C., ch. 35

For the purpose of compliance with E.O. 12291 of February 17, 1981 SBA hereby certifies that this interim final rule, taken as a whole, does not constitute a major rule. In this regard, we are certain that the annual effect of this rule on the economy will be less than $100 million. In addition, this proposal will not result in a major increase in costs or price to consumers, individual industries. Federal, State and local government agencies or geographic regions, and will not have significant adverse effects on foreign or domestic competition, employment, investment, productivity or innovation, or on the

ability of U.S.-based businesses to compete with foreign-based businesses in domestic or export markets.

With one minor exception, this interim final rule will affect only a portion of the small business investment company industry: those companies licensed pursuant to section 301(d) of the Act, a class consisting of approximately 125 companies; and not necessarily all of them. The last sentence of § 107.201(a)(1) which permits, but does not require, an Unincorporated (limited partnership) Licensee to establish its partnership status for tax purposes with an opinion of counsel instead of an IRS ruling, affects all Licensees organized as limited partnerships.

Section 107.201 is the part of the rule that will have the most readily ascertainable immediate and direct economic impact on the SBIC industry. It will affect those section 301(d) Licensees that hereafter obtain debenture Leverage through SBA's guarantee of their debentures, and the inclusion of such debentures in pools of guaranteed debentures. The change in the mechanism by which SBA makes debenture Leverage available to such Licensees will increase their annual cost of future borrowing by approximately 70 to 75 basis points (0.70 percent to 0.75 percent), plus underwriters' fees, representing the public offering cost amortizable over the ten-year term of the debentures. The maximum amount of debentures of section 301(d) Licensees that SBA is authorized to guarantee for the 1990 Fiscal Year is $49,396,000. If the entire amount of the guarantee authority is utilized, the effect of a 75 basis point public offering cost would be to add a total of $370,470 per year, or $3,704,700 over a ten year period, to the aggregate cost of all the debentures of section 301(d) Licensees issued in the 1990 Fiscal Year.

Section 107.201 also implements the authority conferred upon SBA to pay an interest subsidy, for the first five years of the term of the debentures in question, on behalf of those section 301(d) Licensees whose debentures are pooled and sold to the public with SBA's guarantee. If the entire amount of SBA's guarantee authority for the Fiscal Year 1990 is utilized, the amount of this subsidy will be less than $7.5 million.

Section 107.201 also includes language that restates the discretionary authority conferred upon SBA to sell preferred securities purchased by SBA prior to November 21, 1989 back to the issuer at a price less than par, if so requested by the issuer; and to guarantee debentures issued to finance such repurchase. The standards set forth in this rule governing the exercise of SBA's discretion are, word for word, those set forth in Public Law 101-162. The factors that would justify SBA's sale of preferred securities back to the issuer at a price less than the par value—diminished value of such preferred securities and the remoteness of any prospect of future dividends or redemption at par, among other factors—would seem to limit the number of instances in which such a transaction would be feasible for both the Licensees concerned and for SBA. Consequently, the economic impact from SBA's exercise of this authority will be minimal.

Section 107.205(b)(3) will affect only those section 301(d) Licensees that sell preferred securities to SBA after November 20, 1989. It will increase, by 1 percentage point, the amount of dividends such Licensees must pay out of retained earnings, with respect to such securities. However, only section 301(d) Licensees that have net retained earnings have any liability to pay dividends to SBA; and, unless they wish to pay dividends on their common shares in the interim, they can defer payment until such time as they are required to redeem such preferred securities. The sum of $23.5 million is available to SBA for the purchase of preferred securities in Fiscal Year 1990. The maximum aggregate amount of additional annual contingent dividend liability that this rule (which is statutorily mandated) would impose on section 301(d) Licensees in Fiscal Year 1990 would be $235,000.

For purposes of compliance with Executive Order 12162, SBA certifies that this interim final rule will not have Federalism implications warranting preparation of a Federal assessment.

For the purposes of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. SBA believes that this interim final rule will directly affect approximately 125 small entities, a class that in this context is limited to section 301(d) Licensees, and only a fraction of that class will be immediately affected.

Section 301(d) Licensees that would heretofore have been able to sell their debentures to SBA with the benefit of a section 317 subsidy will now be required to apply for SBA's guarantee with a section 303(d) subsidy. The difference in funding procedures will impose upon each such Licensee an additional annual cost of approximately 70 to 75 basis points, plus underwriting fees, amortizable over the ten-year term of the debentures. However, it was the clear intent of Congress that the primary mechanism by which debenture Leverage is extended to section 301(d) Licensees shall henceforth be the use of SBA's guarantee authority, coupled with the section 303(d) subsidy, rather than direct purchase with the section 317 subsidy.

Only one of the substantive changes to the existing regulations involves any choice by SBA between permissible interpretations of statutory language:

In drafting § 107.201, SBA could have given certain language in section 303(d) of the Act, quoted above, an interpretation that would have required any section 301(d) Licensee with outstanding section 317-subsidized debentures in excess of 200 percent of Private Capital to redeem such debentures. SBA could also have interpreted the quoted language of section 303(d) to mean that the maximum amount of debenture Leverage with a section 303(d) subsidy that could be made available to a section 301(d) Licensee was to be reduced by the amount of that Licensee's outstanding debentures with a section 317 subsidy, even if the Licensee was thereby denied the subsidized debenture Leverage for which it had previously been eligible. Instead, SBA adopted interpretations that would have the least adverse impact upon the small entities in the class of section 301(d) Licensees.

In drafting § 107.205(b)(3), SBA considered and rejected, as inconsistent with Congressional intent, alternative language that would have allowed preferred securities purchase on or after November 21, 1989, to remain outstanding for more than fifteen years, pending arrangements to redeem such stock by the sale of its SBA-guaranteed debentures at the next scheduled public offering following the mandatory redemption date. By not requiring a section 301(d) Licensee to apply for the necessary funds in advance of the scheduled funding preceding the mandatory redemption date, SBA would be allowing such Licensees to enjoy a substantial pecuniary benefit equal to the difference between a 4 percent (contingent) dividend obligation and a fixed interest payment obligation equal to the unsubsidized cost of money on SBA-guaranteed debentures for the period between the mandatory redemption date and the next scheduled debenture sale.

The regulatory language adopted by SBA will have no economic impact upon any section 301(d) Licensee that issues redeemable preferred securities to SBA until the fourteenth year thereafter. Then each such section 301(d) Licensee

must consider whether it would be to its advantage to redeem such preferred securities by a cash payment to SBA, or to redeem them through the issuance of guarantee debentures. Section 301(d) Licensees that elect the first course will experience no impact whatsoever; their redeemable preferred securities can remain outstanding for the full fifteen-year term permitted by the Act. Section 301(d) Licensees that elect the second course will experience some impact, since the redemption date will be effectively advanced. It is impossible to state with any degree of precision the number of months or days by which the term of a section 301(d) Licensee's redeemable preferred securities might thus be effectively shortened; this would depend on the relationship between the date such securities were issued and the date, more than fourteen years later, of the last scheduled debenture sale preceding the fifteenth anniversary of the issue date.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Small Business Administration, Small businesses.

For the reasons set out above, part 107 of title 13, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 et. seq., as amended, Pub. L. 100-590 and Pub. L. 101-162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101-162; 15 U.S.C. 687d; 15 U.S. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100-590.

2. Section 107.3 is amended by revising the definition of Private Capital to read as follows:

§ 107.3 Definition of terms.

* * * * *

Private Capital. "Private Capital" means:

(a) *General.* "Private Capital" means the combined private (non-Governmental) paid-in capital and paid-in surplus of a Corporate Licensee, or of any Unincorporated Licensee, the private partnership capital, exclusive of any funds borrowed by the Licensee from any source, or obtained from SBA through the sale of Preferred Securities.

(b) *Licensing eligibility.* For the purpose of determining whether a corporation or limited partnership has the required minimum Private Capital for licensing, "Private Capital" shall be deemed to include, in addition to funds described in paragraph (a) of this definition, Federal funds invested as equity capital in such applicant pursuant to a Statute, such as 42 U.S.C. 9815, which explicitly mandates the inclusion of such funds in Private Capital; but not Federal funds for which investment in a Small Business Investment Company is merely authorized, and not funds invested by any State or local government. See also § 107.705(a)(7).

(c) *Leverage eligibility.* For the purpose of determining what funds may be leveraged, "Private Capital" shall be deemed to include, in addition to funds described in paragraphs (a) and (b) of this definition, Community Development Block Grant funds invested in a Licensee pursuant to the Housing and Community Development Act of 1974, if such Block Grant funds were invested not later than August 16, 1982, and such other Federal funds received from Federal sources explicitly mandated to be leveraged by Federal Statute.

(d) *Regulatory compliance.* For the purpose of determining whether a Licensee is in compliance with §§ 107.103; 107.203(d); 107.303; 107.401(a)(5); 107.501(c); 107.601(g); 107.710(b)(3); or 107.901(a), or any of them, "Private Capital" shall be deemed to include, in addition to funds described in paragraphs (a), (b), and (c), all other Federal funds from any source other than SBA, and any State or local government funds if such Federal, State, or local government funds were invested prior to November 21, 1989.

* * * * *

3. Section 107.201 is amended as follows:

a. Paragraph (a) is revised;

b. Paragraphs (c)(2)(i) through (c)(2)(v) are redesignated as paragraphs (c)(2)(iii) through (c)(2)(vii), respectively and paragraph (c)(2) introductory text is redesignated as paragraph (c)(2)(i).

c. Newly redesignated paragraph (c)(2)(i) is revised and a new paragraph (c)(2)(ii) is added;

d. In newly redesignated paragraph (c)(2)(vi) "information" is removed and "formation" is added:

§ 107.201 Funds to licensee.

(a) *Application procedure—(1) Guaranteed debenture Leverage.* A Licensee other than a section 301(d) Licensee may apply for Leverage pursuant to section 303(b), and a section 301(d) Licensee may apply pursuant to section 303(c) of the Act, on SBA Form 1022 in accordance with accompanying instructions. The aggregate amount of debentures outstanding from a section 301(c) Licensee shall not exceed 400 percent of Private Capital. The aggregate amount of debentures outstanding from a section 301(d) Licensee shall not exceed 400 percent of Private Capital, less the amount of preferred securities issued to SBA. The aggregate amount of debentures with an interest rate reduction pursuant to section 303(d) ("section 303(d) subsidy") that may be issued by a section 301(d) Licensee shall not exceed 200 percent of Private Capital, but see paragraph (a)(2)(ii) of this section. All applications shall be accompanied by evidence demonstrating to SBA's satisfaction the need therefor. Prior to the extension of any Leverage, an Unincorporated Licensee shall furnish SBA with evidence that it qualifies as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by an opinion of counsel, who is neither an Associate nor involved in the drafting of the partnership agreement.

(2) *Preferred securities and alternative debenture Leverage for section 301(d) licensees*—(i) *Preferred securities.* A section 301(d) Licensee may apply for preferred securities Leverage pursuant to section 303(c) of the Act on SBA Form 1022A, in accordance with accompanying instructions. All applications for Leverage shall be accompanied by evidence demonstrating to SBA's satisfaction the need therefor.

(ii) *Alternative debenture Leverage.* Subject to paragraph (a)(1) of this section, a section 301(d) Licensee that has already sold debentures in an amount equal to 200 percent of its Private Capital with SBA's guarantee and interest subsidy pursuant to section 303(d) of the Act may apply for the purchase of additional debentures with a section 317 subsidy on SBA Form 1022A in accordance with accompanying instructions. In no event may the aggregate amount of debentures purchased or guaranteed by SBA and preferred securities purchased by SBA exceed 400 percent of a Licensee's Private Capital.

(iii) *Voluntary redemption rights.* A section 301(d) Licensee may redeem in whole or in part preferred securities purchased by SBA, on any dividend date (after giving SBA at least thirty days written notice) by paying SBA the par value of such securities, but not less than $50,000 par value in any one transaction, and any dividends accumulated and unpaid to the date of redemption. Such Licensee may also request SBA to sell preferred securities purchased by SBA on or before November 20, 1989 back to the issuer at a price less than the sum of par value and such unpaid dividends. SBA shall determine the purchase price of such preferred securities in its sole discretion after considering factors including, but not limited to, the market value of such

securities, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and the Administration's estimate of any anticipated redemption. In the event of a Licensee's redemption of preferred securities below par value, SBA is authorized to guarantee Debentures issued by the purchasing Licensee, in an amount equal to the repurchase price of such preferred securities, for immediate payment to SBA; but SBA shall not pay any part of the interest on such debentures except pursuant to its guarantee in the event of default by the Licensee. See also § 107.205(b)(3)(ii).

* * * * *

(c) *Financing by Issuance and Guarantee of Trust Certificates*

(2) *Authority—(i) (General)* Section 321(a) of the Act authorizes SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of such TC shall be limited to the principal and interest due on the debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC. If SBA guarantees the debenture or debentures of a section 301(d) Licensee, section 303(d) of the Act requires SBA to make such payments to its CRA, or to the holder of any such debenture, as will reduce the effective rate of interest to such Licensee during the first five years of the term of such debenture by three percentage points. No such payments may be made on behalf of any section 301(d) Licensee if the aggregate amount of outstanding debentures with interest rate reductions, as provided in section 303(d) of the Act, exceeds 200 percent of such Licensee's Private Capital. See also paragraph (a)(3) of this section. SBA shall not collect any fee for the guarantee of any TC.

(ii) *Periodic Exercise of Authority.* SBA shall issue guarantees of debentures under section 303 and of TCs under section 321 of the Act at three month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or trust certificates in question.

* * * * *

4. Section 107.205(b)(3) is revised to read as follows:

§ 107.205 Leverage for section 301(d) Licensees.

* * * * *

(b) * * *

(3) *Additional requirements for nonvoting preferred securities Leverage.* No nonvoting preferred securities may be purchased by SBA from any corporate section 301(d) Licensee on or after November 21, 1989 unless its articles make appropriate provision for the following additional matters:

(i) *Payment of dividends to SBA.* Subject to the sound discretion of the board of directors, SBA shall be paid from retained earnings an annual four percent dividend on the par value of its preferred securities. Such dividends shall be payable before any amount shall be set aside for or paid to any other class of stock, and shall be preferred and cumulative, so that in the event SBA has received less than four percent in any fiscal year, such dividends shall be payable on a preferred basis from subsequent retained earnings without interest thereon. Before any declaration of dividends or any distribution (other than to SBA), all dividends accumulated and unpaid on preferred securities issued to SBA shall be paid. The dividend rate on nonvoting preferred securities purchased by SBA prior to November 21, 1989 shall remain three percent on their par value and otherwise be subject to restrictions of this paragraph.

(ii) *Mandatory redemption of perferred securities.* Perferred Securities purchased by SBA on or after November 21, 1989 shall be redeemed by the issuer not later than fifteen years from the date of issuance, at a price not less than the par value, plus any unpaid dividends accrued to the redemption date. SBA may, in its discretion, guarantee debentures for sale at the last periodic debenture sale, before such fifteenth anniversary date, pursuant to section 321 of the Act, in such amounts as will permit the simultaneous redemption of such preferred securities, including all or any part of accrued and unpaid dividends, for immediate payment to SBA. SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee in the event of default in payment by the issuer. See also § 107.201(a)(2)(iii).

* * * * *

Dated: June 26, 1990.

Susan S. Engeleiter,
Administrator.

[FR Doc. 90-15642 Filed 7-9-90; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-45; Special Conditions No. 25-ANM-34]

Special Conditions: British Aerospace, Public Limited Company, Model BAe 125-1000A Airplane; High Altitude Operation, Protection From the Effects of Lightning, and High Energy Radio Frequency (RF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the British Aerospace, Public Limited Company (BAe), Model 125-1000A airplane. This airplane will have an unusually high operating altitude and a new Full Authority Digital Engine Control (FADEC) system which is a new technology electronic system that performs critical or essential functions. These are considered novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes in the Federal Aviation Regulations (FAR). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning or high energy radio frequency (RF), or operation at high altitudes. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: August 9, 1990.

FOR FURTHER INFORMATION CONTACT: For high altitude: Bob McCracken, telephone (206) 431-2118, Flight Test and Systems Branch, ANM-111, and for RF and lightning: Gene Vandermolen, telephone (206) 431-2157, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1988, British Aerospace, Public Limited Company (BAe), applied for an amendment to their Type Certificate No. A3EU to include their new Model BAe 125-1000A airplane. The Model BAe 125-1000A, which is a derivative of the Model BAe 125-800A

currently approved under Type Certificate No. A3EU, incorporates a 43,000-foot certification ceiling and miscellaneous product improvements, including a Full Authority Digital Engine Control (FADEC) system which controls critical engine parameters.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, British Aerospace must show that the Model BAe 125–1000A meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3EU or the applicable regulations in effect on the date of application for the Model BAe 125–1000A. The regulations incorporated by reference are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A3EU are as follows:

Sections 25.2, 25.305 (wing), 25.571, 25.903(d)(1), 25.979 (a) through (c), 25.1419, and 25.1529 of Amendment 25–54. Part 36 of the Federal Aviation Regulations effective December 1, 1969, as amended by Amendments 36–1 through 36–12. Special Federal Aviation Regulations (SFAR) 27 as amended by Amendments 27–1 through 27–24.

For the BAe 125–1000A, compliance will be established with part 25 of the FAR through Amendment 25–70 for the design changes from the Series 800A and those requirements with which British Aerospace has voluntarily agreed to show compliance. Special Federal Aviation Regulation 27 and part 36 through amendments in existence at the time of awarding the type certificate are to be met. These special conditions are also part of the type certification basis.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designed in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model BAe 125–1000A because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

In addition to the applicable airworthiness regulations and special conditions, the Model BAe 125–1000A must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Novel or Unusual Design Features

Operation up to 43,000 Feet

The BAe Model 125–1000A will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 43,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have, therefore, been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125 and Cessna Model 560. The special conditions for the Model 1125 are considered the most applicable to the BAe 125–1000A and its proposed operation. They are, therefore, used as the basis for the special conditions described below.

Damage tolerance methods shall be used to assure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, Amendment 25–54. The cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000-foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition, therefore, requires pressure-demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Protection From the Unwanted Effect of Lightning and High Energy Radio Frequency (RF)

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection, one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high energy radio frequency (RF) transmissions. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have

made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the British Aerospace Model BAe 125-1000A airplane which require that the new technology electrical and electronic systems such as the Full Authority Digital Engine Control (FADEC) systems, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and high frequency radio frequency.

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition for lightning is needed.

The following "threat definition," based on SAE Report AE4L-87-3, is proposed as a basis to use in demonstrating compliance with this lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon the systems installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "harness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation. And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where: t = time in seconds,
i = current in amperes, and

	Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (1/2 Component D)	Multiple Burst (Component H)
I_0, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{peak} =	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$(amp/sec) =	1.4 X 10^{11} @t = 0+sec	1.4 X 10^{11} @t = 0+sec	0.7 X 10^{11} @t = 0+sec	2.0 X 10^{11} @t = 0+sec
di/dt, (amp/sec) =	1.0 X 10^{11} @t = .5μs	1.0 X 10^{11} @t = .25μs	0.5 X 10^{11} @t = .25μs	---
Action Integral (amp^2 sec) =	2.0 X 10^6	0.25 X 10^6	.0625 X 10^6	---

High Energy Radio Frequency (RF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of the FADEC to high energy RF must be established.

It is not possible to precisely define the high energy RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for high energy RF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing high energy RF emitters, an adequate level of protection exists when compliance with the high energy RF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum RF threat of 100 volts per meter average electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	8,300	2,000
1 GHz–2 GHz	9,000	1,500
2 GHz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	800
6 GHz–8 GHz	4,000	666
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	509
20 GHz–40 GHz	4,000	1,000

The RF envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–90–4–NM for the British Aerospace Model BAe 125–1000A airplane was published in the **Federal Register** on March 5, 1990 (55 FR 7724). Comments were received from a foreign airworthiness authority regarding the high altitude portion of the rule, and the applicant, who provided several comments related to both the high altitude and RF energy protection proposals.

Transport Canada noted that the requirements relating to oxygen mask quick-donning capability in the proposed special condition are not the same as that appearing in some earlier high altitude operation special conditions, or in the current part 25 regulation related to oxygen mask requirements. The proposed special condition stated that: "A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from storage and donned within 5 seconds." Section 25.1447(c)(2)(i) of the FAR states that the mask must be designed and installed so that it "Can be placed on the face from its ready position, properly secured, sealed, and supply oxygen upon demand, with one hand within five seconds * * *." Transport Canada suggests that the previous special condition wording, which is similar to the current part 25 terminology, is more appropriate.

The FAA concurs with this comment. Previously issued special conditions related to high altitude operation have been reviewed. Prior to February 1984, the requirements related to oxygen masks had clarifying terminology similar to that contained in § 25.1447 of the FAR. After that time, the phraseology that appears in this proposal was used. While it is not clear why the wording changed, the FAA has determined that the statement that the mask to be donnable with one hand, sealed, and delivering oxygen within the 5 second period is needed for clarity in interpreting the requirement. This change is considered to be of a clarifying nature, and the final special condition is changed to reflect this determination.

There was one comment on the type certification basis which proposes a change in wording in the third paragraph. This change was requested to indicate that requirements, in addition to design changes from the Series 800A, were voluntarily agreed upon and included in the certification basis.

The FAA concurs that the proposed wording correctly identifies the certification basis. The first two sentences in the third paragraph are replaced with the following:

"For the BAe 125–1000A, compliance will be established with part 25 of the FAR through Amendment 25–70 for design changes from the Series 800A and those requirements with which British Aerospace has voluntarily agreed to show compliance."

Comments received on high energy radio frequency protection indicate objections to the definition of the external electromagnetic test environment. The applicant considers the threat to be unrealistically severe, and suggests that the "European" threat definition be used. In addition, Bulk Current Injection (BCI) test techniques are proposed to qualify the FADEC system to an upper limit of 20 GHz.

The FAA does not agree that the test environment specified in the preamble of the special conditions is unrealistically severe. An option is given to subject the equipment to 100 volts per meter over the given frequency range, without the benefit of airframe shielding, or to use the external threat envelope recommended by the Electromagnetic Compatibility Analysis Center (ECAC) and the SAE AE4R subcommittee. The FAA has accepted these options as reasonable requirements for test purposes. Work is presently being done to refine the definition and establish joint FAA/JAA agreement. However, until this work is completed, no change in the FAA special conditions will be made.

The FAA concurs that BCI techniques may be used to qualify the FADEC system; however, only for frequencies below 400 MHz. Test methods and procedures that are unacceptable to the FAA can be found in the lastest draft of the user's manual being developed by the SAE AE4R subcommittee and section 20 of DO–160C. Bench tests, as outlined in section 20 of DO–160C, call for BCI tests from 10 KHz to 400 MHz, and radiated tests from 30 MHz to the upper frequency limit. The FAA will accept the upper frequency limit of 20 GHz.

A comment was made proposing the deletion of the reference to CAR 4b.375 in the pressurization section of the special condition for operation over 43,000 feet. The FAA concurs with this comment and has made the suggested change. In this same section, Paragraph 1.b. refers to "Any single failure * * *." A comment was made that this should relate to any probable failure so as to be consistent with the other sections of the special condition. This comment was rejected because the intent of this paragraph was to address any failure (probable, improbable or extremely improbable) of the pressurization

system combined with the occurrence of a door seal or other fuselage leak.

A comment was made that the lightning protection special condition should only apply to new electronic systems which perform critical functions because some of the systems installed in this airplane may have been previously approved by the FAA in a similar airplane.

The FAA does not consider this change necessary because all systems which perform critical functions should be considered. If previously certified systems that perform critical functions in a similar airplane have been qualified for lightning protection, a finding of equivalency may be a consideration in satisfying the requirements of the special condition.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, pursuant to the authority delegated me by the Administrator, the following special conditions are issued as part of the type certification basis for the British Aerospace, Public Limited Company, Model BAe 125-1000A series airplane:

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. *Operation to 43,000 feet:*

a. *Pressure Vessel Integrity.*

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph d (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

b. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventiliation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

c. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

d. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs d1 and d2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that BAe must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

e. *Oxygen Equipment and Supply.*

1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure-demand mask with mask-mounted regulator must be provided for each pilot. It must be shown that each quick-donning mask can be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand, with one hand within five seconds.

3. *Lightning Protection*

a. Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not affected when the airplane is exposed to lightning.

b. Each essential function of new or modified electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

4. *Protection from Unwanted Effects of High Energy Radio Frequency (RF).* Each new electrical and electronic system must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

5. For the purpose of these special conditions, the following definitions apply:

Critical Function. Any function the failure of which would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Any function the failure of which would contribute to or cause a failure condition which would have a significant impact on the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

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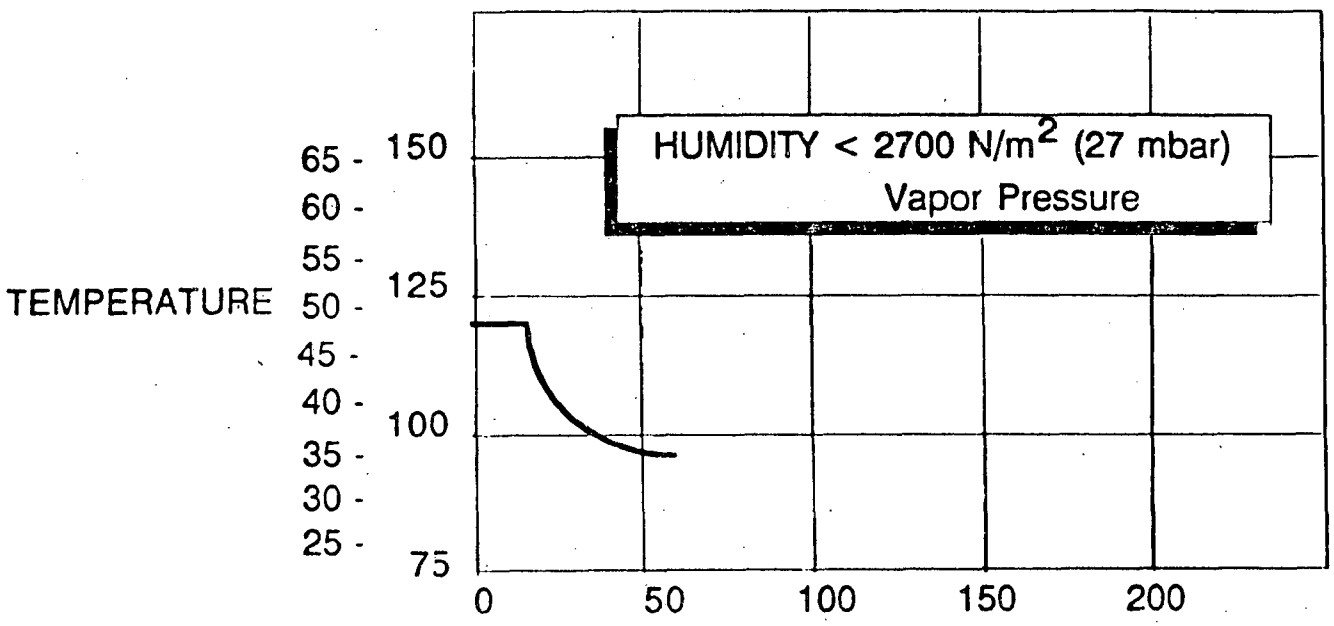
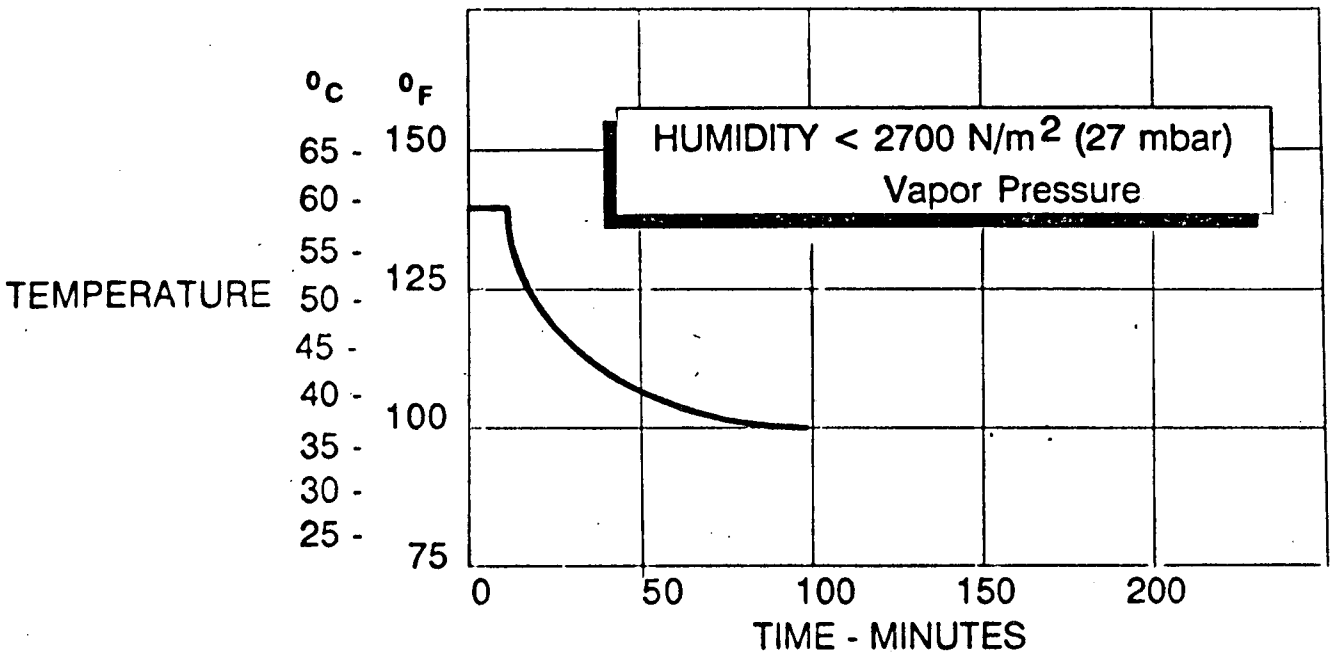


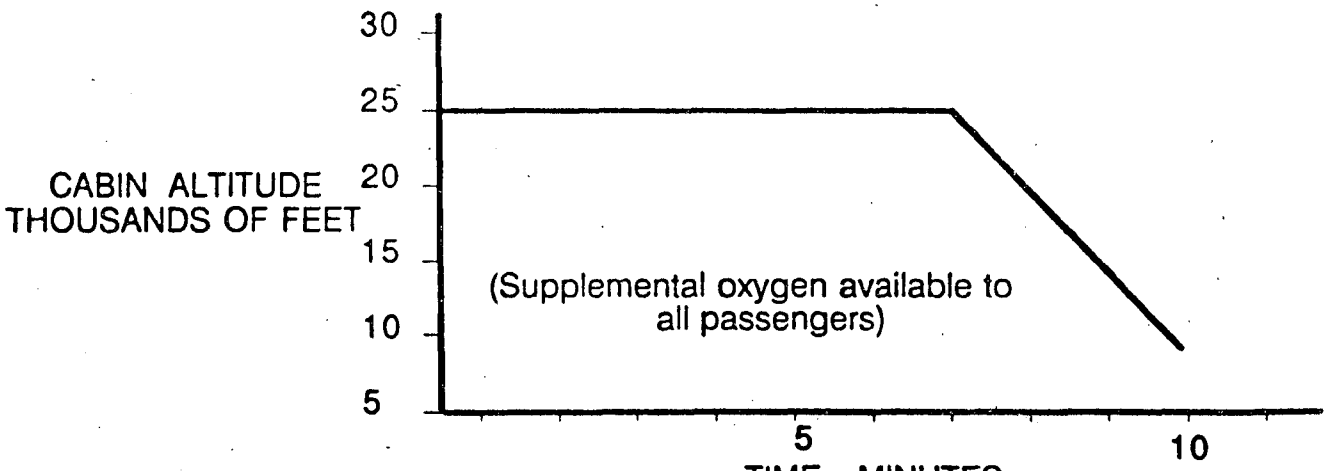
TIME - TEMPERATURE RELATIONSHIP

FIGURE 1



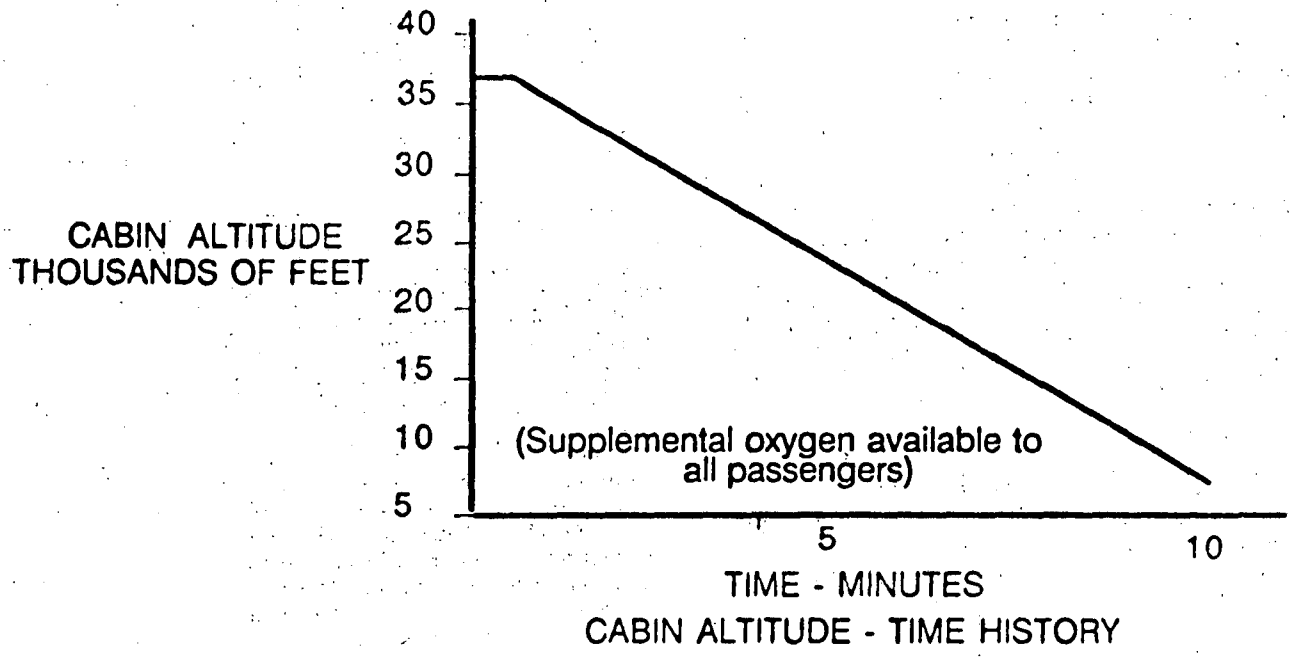
TIME - TEMPERATURE RELATIONSHIP

FIGURE 2



CABIN ALTITUDE - TIME HISTORY
FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.



CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910-13-C

Issued in Seattle, Washington, on June 29, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 90-15995 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-58; Amdt. 39-6646]

Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting an airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R22 series helicopters by individual letters. The AD requires an initial dye penetration inspection; replacement of the main rotor spindle if cracks are found; rework of the main rotor spindle if no cracks are found; replacement of the journal with a new design part; and a manual check for roughness of the pitch bearing set. In addition, repetitive inspections of the improved spindles and journals are also required. The AD is necessary because a crack in a main rotor spindle could result in the loss of a main rotor blade and subsequent loss of the helicopter.

DATES: *Effective Date:* Effective August 7, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88-26-01, issued December 15, 1988, as amended by AD 88-26-01 R1, issued February 8, 1989, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Robinson Helicopter Company, 24747 Crenshaw Blvd., Torrance, CA 90505, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Matheis, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, CA 90806-2425, telephone (213) 988-5235.

SUPPLEMENTARY INFORMATION: On December 15, 1988, Priority Letter AD 88-26-01 was issued and made effective immediately as to all known U.S. owners and operators of Robinson Helicopter Company Model R22 series helicopters. The AD requires an initial dye penetrant inspection; replacement of the A158-1 main rotor spindle with an airworthy part if cracks are found; rework of the A158-1 main rotor spindles if no cracks are found; replacement of the A106 journal with a new design part; and a manual check for roughness of the A159-1 pitch bearing set for helicopters with 500 or more hours' time in service and for those helicopters upon attaining 500 hours' time in service. In addition, repetitive inspections of the improved spindles and journals are required thereafter at 500-hour intervals. The AD was subsequently amended by AD 88-26-01 R1, issued February 8, 1989, to add an alternate means of compliance; to add a reference to a new service bulletin; and to revise the compliance statement to apply to spindle time in service. This AD action was necessary because a crack was found in two main rotor spindles, which could result in loss of a main rotor blade and subsequent loss of the helicopter.

The AD, as adopted, has some minor editorial changes to reorder paragraph (h) as paragraph (f), and paragraphs (f) and (g) as paragraphs (g) and (h) respectively. In addition, the instructions of Service Bulletins 60 and 60A are now included in paragraph (a).

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual priority letters issued December 15, 1988, as amended, to all known U.S. owners and operators of RHC Model R22 series helicopters. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the FAR to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regualtory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket.

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Robinson Helicopter Company: Applies to Model R22 series helicopters, all serial numbers containing A158-1 main rotor spindle and A106 journals, certificated in any category. (Docket No. 88-ASW-58)

Compliance is required prior to further flight for all helicopters with spindles having over 500 hours' time in service, and for all helicopters regardless of total time in service that have experienced an unexplained increase in main rotor vibration level, unless already accomplished. For those helicopters with spindles having less than 500 hours' total time in service, compliance is required prior to attaining 500 hours' total time in service, unless already accomplished. Thereafter, conduct repetitive inspections of the original design spindles and journals as specified in paragraph (f) of this AD at intervals not to exceed 50 hours' time in service since the last inspection, or conduct repetitive inspections of spindles and journals which have been reworked and replaced as specified in paragraphs (b) and (c) of the AD at intervals not to exceed 500 hours' time in service from the last inspection.

To prevent main rotor spindle failure, which could result in subsequent loss of the helicopter, accomplish the following:

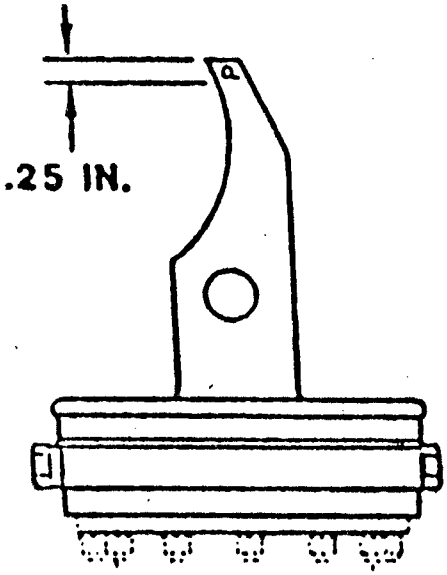
(a) Remove both main rotor blades (ref. section 9.111 of the R22 Maintenance Manual). Clean and dye penetrant inspect both bolt holes and adjacent surfaces on the A158–1 spindles. If a crack indication is found replace the spindle with an airworthy part which has been reworked in accordance with the following:

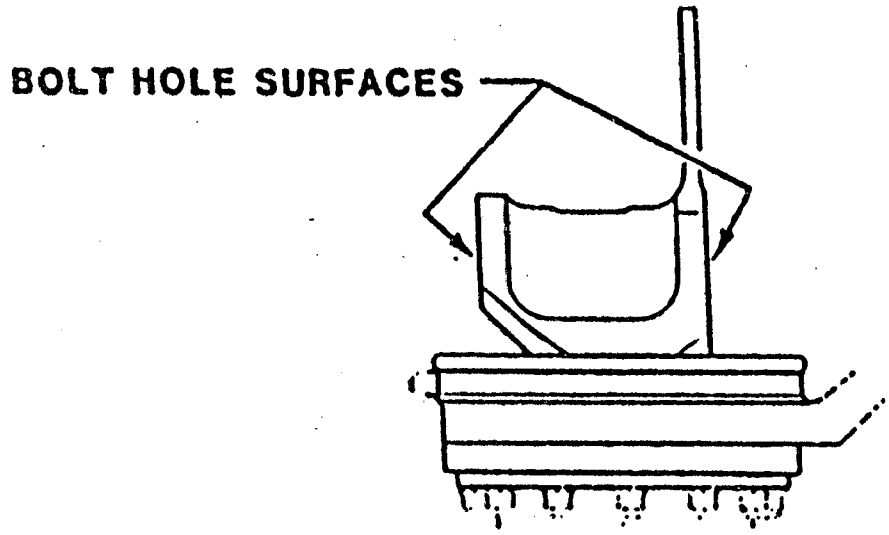
(1) Remove both main rotor blades. Clean, visually inspect with a 10X magnifying glass, and dye penetrant inspect both bolt hole surfaces. If any crack indication is found, immediately remove from service. Visually inspect surfaces of nicks, scratches, pits, or excessive fretting. If surface defects greater than 0.0005 inch deep are found, the spindle must be replaced with an airworthy part.

(2) Polish bolt hole surfaces with 220, 320, and 400 grit abrasive paper to remove surface defects and all indication of fretting. Inspect with a 10X magnifying glass to insure that no fretting indications remain. The abrasive paper must be mounted on a flat block so the polished surface will remain perfectly flat.

(3) Without removing the spindle from the blade, shot peen both surfaces (ref. AMS2430) to 98 percent minimum coverage, intensity 0.010A to 0.013A, with 0.019/0.033 diameter steel shot. Mask with duct tape all areas and blade parts not to be peened. Overspray in the 0.625 diameter bolt hole can be prevented by installing a 0.625 inch diameter dowel or discarded bolt shank.

(4) Polish peened surfaces using 220, 320, and 400 grit paper mounted on flat block to keep surfaces perfectly flat. Do not remove all indications of shot peening. Polish only until 95 to 98 percent of the surface appears polished and flat with only a few tiny pock marks from the shot peening still barely visible. Remove all shot peen balls between the spindle and the boot. Vibro-etch the letter "P" on the spindle, as shown below.





(b) If no defects are found when accomplishing the inspection required by paragraph (a), unless previously accomplished, rework the A158–1 spindle by shot peening the surfaces which mate with the A106 journals as required by paragraph a(1) through (4) of this AD. This rework may be performed by an FAA-approved repair station authorized to perform this process.

(c) Remove and replace all A106 journals in the coning and teeter hinges (a total of six per aircraft) with new A106 Revision 0 or subsequent journals. These redesigned journals may be identified by a yellow primed bore of the bolt hole.

(d) Manually rock the A158–1 spindle back and forth to check for roughness in the A159–1 pitch bearing set and, if roughness is detected, return the pitch bearing set to an approved RHC overhaul facility for inspection and/or repair (ref. section 2.540, R22 Maintenance Manual, Robinson Technical Report 60).

(e) After performing the A158–1 spindle rework specified in paragraph (b) and the A106 journal replacement specified in paragraph (c) of this AD, reinstall the main rotor blades (ref. Section 9.112 R22 Maintenance Manual). Make certain the journal and spindle surfaces are clean and dry before assembling. Also, exercise caution to insure that the bolts are stretched to the new limits specified in paragraph (a)(7). Track and balance the rotor (ref. section 10.200, R–22 Maintenance Manual).

(f) Spindles (without rework) and original design journals may be used in accordance with the following procedures:

(1) Conduct the following inspections and rework at intervals not to exceed 50 hours' time in service:

(i) Remove both main rotor blades (ref. Section 9.111, R22 Maintenance Manual).

(ii) Clean and dye penetrant inspect both the bolt holes and the adjacent surfaces on the A158–1 spindles.

(iii) If any spindle is found to contain a crack, replace with an airworthy part before further flight.

(iv) If spindle surface defects exceed 0.0005 inches in depth, the spindle must be replaced with an airworthy part before further flight. Superficial fretting may be removed by lightly polishing with 400 or finer abrasive paper.

(v) Visually inspect the A106 journals. If cracked, replace with an airworthy part before further flight.

(vi) Check pitch bearing set for roughness, and comply with paragraph (d) of this AD.

(vii) Reinstall main rotor blades (ref. Section 9.112, R22 Maintenance Manual). Make certain the journal and spindle surfaces are clean and dry before assembling.

(2) Replace the NAS 630–80 bolts and A189–10 nuts with new parts after each fifth inspection which requires disassembly and reassembly of the main rotor system.

(3) This alternate means of compliance terminates March 31, 1989, after which compliance with the requirements of paragraphs (a) though (e) of this AD is required.

(g) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the inspection required by this AD may be accomplished.

(h) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California.

This amendment becomes effective August 7, 1990, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD 88–26–01, issued December 15, 1988,

as amended by AD 88-26-01 R1, issued February 8, 1989, which contained this amendment.

Issued in Forth Worth, Texas, on June 21, 1990.

A. J. Merrill,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-15650 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-248-AD; Amdt. 39-6650]

Airworthiness Directives; Boeing Model 737-300 and 737-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 and -400 series airplanes, which requires an inspection of the left engine fuel feed tube assembly for proper clearance between the adjacent wing/strut structural brace, and replacement, if necessary. This amendment is prompted by reports of fuel line chafing of the engine fuel feed tube in the wing/strut area. This condition, if not corrected, could result in fuel leakage causing a potential engine strut fire hazard.

EFFECTIVE DATE: August 14, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 737-300 and 737-400 series airplanes, which requires an inspection of the left engine fuel feed tube assembly for proper clearance between the adjacent wing/strut structural brace, and adjustment or replacement, if necessary, was published in the **Federal Register** on January 4, 1990 (55 FR 303).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer commented that the proposed rule was unjustified because there have been no reported cases of fuel leaks caused by chafing of the engine fuel feed tube in the wing/strut area of the left engine. From that comment, the FAA has inferred that the commenter is requesting that the rule be withdrawn. The FAA does not concur. Although there have been no reported cases of fuel leakage, the potential for fuel leaks still exists when the fuel feed tube is chafed between the left engine and the adjacent wing/strut structural brace. This AD action addresses that potential unsafe condition.

This commenter also noted that the original issue of Boeing Service Bulletin 737-28-1055, dated December 4, 1985, gave directions to replace the left engine fuel tube if additional clearance is required. It further noted that Revision 1 of that service bulletin, dated October 27, 1988, which is cited in the proposal, added procedures for clearance with the thermal anti-ice (TAI) duct following fuel tube replacement for the *right* engine. Clearance with TAI duct for the right engine was the subject of Service Bulletin 737-28-1077 and AD 89-10-01 (Amendment 39-6200; 54 FR 18275, April 28, 1989). The commenter implied that, since the previous AD action addressed this clearance aspect in the wing/strut area, the proposed AD is not necessary. The FAA does not concur. The existing AD 89-10-01 requires inspection and modification, if necessary, of the right engine, but does not include procedures addressing the left engine. That AD also references only Service Bulletin 737-28-1077, which does not include procedures concerning clearances affecting the left engine.

This commenter further stated that the fuel tube in the left strut is not adjustable; therefore, the proposed requirement to "adjust, if necessary" should be dropped. After further review of the available data, the FAA concurs. The final rule has been revised to require only replacement of the tubing if inadequate clearance is found.

This commenter also noted that Boeing Service Bulletin 737-28-1084, dated September 14, 1989, provides instructions for installation of only the *current production* fuel tubes, to ensure adequate clearance. The commenter stated that this installation is not necessary if adequate clearance was obtained with other fuel feed tube assemblies installed. The FAA agrees with the commenter's observations; however, no revision of the proposed rule is necessary in this regard. The final rule requires that operators either (1) inspect the fuel feed tube assembly for proper clearance and replace fuel tube if inadequate clearance is found; or (2) as an option, replace the fuel feed tube within three months.

The Air Transport Association (ATA) of America requested that the applicability statement of the proposed rule be revised to be consistent with the effectivity specified in the latest revision of the service bulletin relevant to the inspection procedures (Service Bulletin 737-28-1055), rather than the effectivity listed in the service bulletin relevant to the replacement procedures (Service Bulletin 737-28-1084). The latest revision of the manufacturer's service bulletin excludes some airplanes; operators of these airplanes infer that they would not have the option to accomplish the inspection, but would be specifically required to replace the tubes. The FAA does not concur that a revision of the proposed rule is necessary. The inspection procedures outlined in Service Bulletin 737-28-1055, Revision 1, can be accomplished on any Model 737-300 or 737-400, and are not specifically tailored only to airplanes listed in the effectivity of the service bulletin. The applicability of this AD takes precedence over the effectivity listed in any service bulletin.

The ATA also commented that the instructions for installation of the tube, specified in Service Bulletin 737-28-1084, are incomplete, because the adjacent structure tube installation minimum clearance requirement is not referenced. The commenter requested that this be included in the final rule. The FAA concurs that additional instructions are necessary to ensure that minimum clearance between the support structure and the fuel feed tube are maintained, once the tube has been replaced. The final rule has been revised to include this procedure.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on

any operator nor increase the scope of the AD.

There are approximately 500 Model 737-300 and -400 series airplanes of the affected design in the worldwide fleet. It is estimated that 225 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $45,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737-300 and 737-400 series airplanes, listed in Boeing Service Bulletin 737-28-1084, dated September 14, 1989, certificated in any category. Compliance required within three months after the effective date of this AD, unless previously accomplished.

To prevent a fire hazard associated with a fuel leak, due to the fuel tube assembly chafing against the adjacent wing/strut structural brace, accomplish the following:

A. Accomplish one of the following:

1. Inspect the left engine fuel feed tube assembly for proper clearance and chafing in accordance with Boeing Service Bulletin 737-28-1055 Revision 1, dated October 27, 1988. If inadequate clearance is found, prior to further flight, replace the fuel tube with a serviceable fuel tube, in accordance with Boeing Service Bulletin 737-28-1084, dated September 14, 1989, and verify minimum clearance between support structure and fuel tube, in accordance with the above Service Bulletin 737-28-1055, Revision 1, dated October 27, 1988.

2. Replace the left engine fuel feed tube in accordance with Boeing Service Bulletin 737-28-1084, dated September 14, 1989, and verify minimum clearance between support structure and fuel tube in accordance with Service Bulletin 737-28-1055, Revision 1, dated October 27, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 14, 1990.

Issued in Seattle, Washington, on June 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-15992 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-41-AD; Amdt. 39-6652]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which requires periodic removal of the tailplane trim gearbox, drainage and replacement of oil, and reinstallation of the gearbox. This amendment is prompted by reports that the tailplane trim handwheel could not be operated in flight due to contamination of the trim gearbox oil with water. This condition, if not corrected, could result in an inoperative tailplane trim system, which could lead to reduced controllability of the airplane.

EFFECTIVE DATE: August 14, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require periodic removal of the tailplane trim gearbox, drainage and replacement of oil, and reinstallation of the gearbox, was published in the Federal Register on April 17, 1990 (55 FR 14290).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,200.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, pre-modification PM5384, certificated in any category. Compliance is required within 2,400 hours time-in-service or two years after the effective date of this AD, whichever occurs first, unless previously accomplished within the past 2,400 hours time-in-service or within the past two years; and thereafter at intervals not to exceed 4,800 hours time-in-service or four years, whichever occurs first.

To prevent tailplane trim gearbox oil from being contaminated with water, accomplish the following:

A. Remove the tailplane trim gearbox from the airplane, drain the oil, flush and refill with clean oil, and replace the filler plug and wire lock, in accordance with paragraph 2.2 of British Aerospace Alert Service Bulletin 27-A-PM5384, Issue 1, dated July 24, 1989. Reinstall the gearbox in the airplane and test in accordance with Maintenance Manual Chapter 27-40.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective August 14, 1990.

Issued in Seattle, Washington, on June 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-15993 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-34-AD; Amdt. 39-6651]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, DC-9-80 Series, MD-88, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 Series, DC-9-80 Series, MD-88, and C-9 (Military) series airplanes, which requires replacement of a certain lap belt at the forward cabin attendant double seat. This amendment is prompted by a report that the outboard attendant lap seat belt connection half can inadvertently be thrown into the lower hinge of the passenger entrance door and obstruct opening of the door. This condition, if not corrected, could result in delayed evacuation of passengers in an emergency situation.

EFFECTIVE DATE: August 14, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; ATTN: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9 Series, DC-9-80 Series, MD-88, and C-9 (Military) series airplanes, which requires replacement of a certain lap belt at the forward cabin attendant double seat, was published in the Federal Register on March 22, 1990 (55 FR 10626).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

One commenter proposed that the compliance time should be twelve months instead of the proposed six months because modification of this commuter's fleet of 149 airplanes will take twelve months and the vendor's lead time for parts is a concern. The FAA does not concur. The modification is estimated to take only 0.6 hour per airplane and the manufacturer advised the FAA earlier that ample parts would be available within the six-month compliance time.

Another commenter proposed that the FAA allow the lap belt of either the "Pacific Scientific" or the "Am-Safe" restraint systems to be used with the currently installed system since they are physically interchangeable. This would allow quicker conversion to the modified lap belts. The FAA does not concur because the proposed configuration has not been evaluated by the FAA. However, the FAA would consider an alternate means of compliance, under the provisions of paragraph B. of the final rule, on a case-by-case basis.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternate means of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described above. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 450 McDonnell Douglas Model DC-9 Series, DC-9-80 Series, MD-88, and C-9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 375 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts to accomplish this modification is to be reimbursed by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9 Series, DC-9-80 Series, MD-88, and C-9 (Military) series airplanes, as listed in McDonnell Douglas DC-9 Alert Service Bulletin A25-311, dated January 31, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the lap belt connector from jamming the passenger entrance door hinge, accomplish the following:

A. Within six months after the effective date of this AD, modify the forward cabin attendant dual seat, outboard position, lap belt restraint system, in accordance with the Accomplishment Instructions, Paragraph 2., of McDonnell Douglas DC-9 Alert Service Bulletin A25-311, dated January 31, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846: ATTN: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective August 14, 1990.

Issued in Seattle, Washington, on June 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-15994 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 90-ACE-01]

Alteration of Control Zone; Rolla, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the control zone at Rolla, Missouri, by changing it from a full-time to a part-time control zone. The FAA has been advised that weather observations are not available at the Rolla National Airport from 10 p.m. to 6 a.m. each day. Accordingly, it is necessary to alter the control zone description at the Rolla National Airport, Rolla, Missouri, to reflect its part-time status. The effective dates and times of the control zone will be published in the Airport/Facility Directory.

EFFECTIVE DATE: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

History

On May 1, 1990, the FAA published a Notice of Proposed Rulemaking, which

would amend § 71.171 of part 71 of the Federal Aviation Regulations so as to alter the control zone at Rolla, Missouri (55 FR 18122). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the control zone at Rolla, Missouri. The FAA has been advised that weather observations are not available at the Rolla National Airport from 10 p.m. to 6 a.m. each day. Accordingly, it is necessary to alter the control zone description at the Rolla National Airport, Rolla, Missouri, to reflect its part-time status. The control zone will be effective during the specific dates and times established in advance by a Notice to Airmen and will be continuously published in the Airport/Facility Directory.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Vichy, Missouri [Revised]

Within a 5-mile radius of the Rolla National Airport (lat. 38°07'40" N., long. 91°46'10" W.); and within 3 miles each side of the 067° radial of the Vichy VORTAC extending from the 5-mile radius zone to 6½ miles northeast of the Vichy VORTAC. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen and continuously published in the Airport/Facility Directory.

Issued in Kansas City, Missouri, on June 28, 1990.

Billy G. Peacock,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 90-15997 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASW-14]

Establishment of Transition Area; Lovington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The action will establish a new transition area located at Lovington, NM. The development of a new random area navigation (RNAV) standard instrument approach procedure (SIAP) to the Lea County-Lovington Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for all aircraft executing this new SIAP. Coincident with this action will be the changing of the status of the Lea County-Lovington Airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On March 29, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area located at Lovington, NM (55 FR 14295).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will establish a transition area located at Lovington, NM. The development of a new RNAV RWY 3 SIAP to the Lea County-Lovington Airport has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for all aircraft executing this new SIAP. Coincident with this action will be the changing of the status of the Lea County-Livington Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lovington, NM [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Lea County-Lovington (latitude 32°57'00" N., longitude 103°24'20" W.), and within 2.5 miles each side of the 235° bearing of the Lovington NDB (latitude 32°56'49" N., longitude 103°24'34" W.), extending from the 7-mile radius area to 11.5 miles southwest of the Lea County-Lovington Airport.

Issued in Fort Worth, TX, on June 15, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-16000 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-70]

Establishment of Transition Area; Sallisaw, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on June 8, 1990 (55 FR 23422), Airspace Docket No. 89-ASW-70.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 90-13307, Airspace Docket No. 89-ASW-70, published on June 8, 1990 (55 FR 23422), established a transition area located at Sallisaw, OK. An error was discovered in the geographic coordinates for the Sallisaw Municipal Airport, Sallisaw, OK. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Sallisaw Municipal Airport, Sallisaw, OK, as published in the **Federal Register** on June 8, 1990 (55 FR 23422), (Federal Register Document 90-13307; page 23422, column 2), are corrected as follows:

§ 71.181 [Corrected]

2. Sallisaw, OK [Corrected]

By removing "(latitude 35°26'18" N., longitude 94°48'08" W.)" and substituting "(latitude 35°26'23" N., longitude 94°48'10" W.)."

Issued in Fort Worth, TX, on June 19, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-16001 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-ASW-19]

Revision of Control Zone; Fort Worth Alliance Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will revise the control zone located at Fort Worth Alliance Airport, TX. The action is necessary because the 6-SM (statute mile) control zone is larger than required and needs to be reduced to a 5-SM control zone. The intended effect of this revision is to reduce the size of the Fort Worth Alliance Airport, TX, Control Zone from 6-SM to 5-SM, exclude the Stagecoach Hills Airpark, and still provide adequate controlled airspace for aircraft executing all standard instrument approach procedures (SIAPS) serving the Fort Worth Alliance Airport.

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On April 2, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the control zone located at Fort Worth Alliance Airport, TX (55 FR 14293).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received; however, several comments were received requesting that the Stagecoach Hills Airpark, a private airport located just east of the Alliance Airport, be excluded from the control zone. After further review, the FAA has determined that the Stagecoach Hills Airpark may be excluded from the control zone without causing an adverse effect on IFR traffic using the Fort Worth Alliance Airport. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will revise the control zone located at Fort Worth Alliance Airport, TX. The original control zone, which became effective on November 16, 1989, was described as within a 6-SM radius of the Alliance Airport. The action is necessary because the 6-SM control zone is larger than required and needs to be reduced to a 5-SM control zone, with arrival extensions both north and south of the airport. The intended effect of this action is to reduce the size of the Fort Worth Alliance Airport, TX, Control Zone from 6-SM to 5-SM, with two arrival extensions, exclude the Stagecoach Hills Airpark from the control zone, and still provide adequate controlled airspace for all aircraft executing both the ILS RWY 16 and the ILS RWY 34 SIAP's.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71-DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1384(a), 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Worth Alliance Airport, TX [Revised]

Within a 5-mile radius of the Alliance Airport (latitude 32°59'11" N., longitude 97°19'02" W.), and 1 mile each side of the 350° bearing from the airport extending from the 5-mile radius to 6 miles north of the airport and 1 mile each side of the 170° bearing from the airport extending from the 5-mile radius to 6 miles south of the airport; excluding that airspace within a 1-mile radius of the Stagecoach Hill Airpark (latitude 32°58'01" N., longitude 97°13'57" W.). This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Director.

Issued in Fort Worth, TX, on June 18, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-15996 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASW-05]

Removal of Transition Area: Matagorda, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will remove the transition area located at Matagorda, TX. This action is necessary since the only standard instrument approach procedure (SIAP) serving the Matagorda Peninsula Airport has been canceled. The intended effect of this action is to return that controlled airspace no longer required for aircraft executing the SIAP to the Matagorda Peninsula Airport. Coincident with this action will be the changing of the status of the airport from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 u.t.c., August 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On April 2, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove the transition area located at Matagorda, TX (55 FR 13803).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was published in Handbook 7400.6F, dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will remove the transition area located at Matagorda, TX. This action is necessary since the only SIAP serving the Matagorda Peninsula Airport has been canceled, thus negating the need for a 700-foot transition area. The intended effect of this action is to return that controlled airspace no longer required for aircraft executing the SIAP to the Matagorda Peninsula Airport. Coincident with this proposal will be the changing of the status of the Matagorda Peninsula Airport from IFR to VFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Matagorda, TX [Removed]

Issued in Fort Worth, TX, on June 15, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-16002 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-23-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-21]

Establishment of Transition Area; Louisa, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the magnetic variation and the geographical coordinates of a final rule that was published in the Federal Register on April 10, 1990 (55 FR 13263), Airspace Docket No. 89-AEA-21.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 90-8195, Airspace Docket No. 89-AEA-21, published on April 10, 1990 (55 FR 13263), established a new Transition Area at Louisa, VA. Since the publication date of the final rule, the geographic coordinates of the Louisa County/Freeman Field Airport, Louisa, VA, have changed. Additionally, an error was discovered in the magnetic variation used to calculate a bearing from the airport based on True North. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates of the Louisa County/Freeman Field Airport, Louisa, VA, and the Transition Area description, as published in the **Federal Register** on April 10, 1990 (55 FR 13263), (Federal Register Document 90-8195; page 13264, column 1), are corrected as follows:

§ 71.181 [Corrected]

2. Louisa, VA [Corrected]

By removing "(lat. 38°00'37" N., long. 77°58'04" W.)" and substituting "(lat. 38°00'35" N., long. 77°58'20" W.)";

By removing "266° (T)" and substituting "263° (T)".

Issued in Jamaica, New York, on June 15, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-16003 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Docket No. 26141, SFAR No. 59]

RIN 2120-AD54

Temporary Prohibited Areas; 1990 Goodwill Games in the State of Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an editorial error which appeared in a final rule, published on May 14, 1990, establishing, for the period July 11, 1990, through August 6, 1990, temporary prohibited areas overlying competition sites and other locations during the 1990 Goodwill Games in the State of Washington.

DATES: Effective July 11, 1990. SFAR No. 59 expires August 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Ricahrd K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1990, the FAA published Special Federal Aviation Regulation (SFAR) No. 59 (55 FR 20100) which establishes temporary prohibited areas overlying the Goodwill Games competition sites and other locations. The regulatory description of the Pasco (Vista) site which appears on page 20103 in the paragraph titled "Boundaries." is incorrect. This action corrects that error.

Correction to Final Rule

An editorial error in the regulatory text of Section 12 of SFAR No. 59, page 20103, in the paragraph entitled "Boundaries." is corrected by making the following change:

SFAR No. 59—Temporary Prohibited Areas; 1990 Goodwill Games in the State of Washington

* * * * *

12. Pasco (Vista). Effective July 11, 1990, until August 6, 1990.

[Corrected]

Boundaries. That airspace within a 1-nautical mile radius of lat. 46°13'17"N., long. 119°13'44" W., excluding the airspace within a ¼-nautical mile radius of lat. 46°13'15" N., long. 119°12'15" W.

* * * * *

Issued in Washington, DC on July 3, 1990.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 90-15998 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26270; Amdt. No. 1429]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and

publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immeditate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on June 22, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 23, 1990*

Birmingham, AL—Birmingham, LOC RWY 23, Amdt. 5
Birmingham, AL—Birmingham, NDB RWY 5, Amdt. 30
Birmingham, AL—Birmingham, NDB RWY 23, Amdt. 16
Birmingham, AL—Birmingham, ILS RWY 5, Amdt. 38
Birmingham, AL—Birmingham, RADAR-1, Amdt. 18
Atlantic, IA—Atlantic Muni, NDB RWY 12, Amdt. 8
Olathe, KS—Johnson County Executive, VOR RWY 35, Amdt. 10
Olathe, KS—Johnson County Executive, LOC RWY 17, Amdt. 6
Olathe, KS—Johnson County Executive, NDB RWY 17, Amdt. 3
Olathe, KS—Johnson County Executive, NDB-B, Amdt. 2
Topeka, KS—Forbes Field, VOR/DME or TACAN RWY 3, Amdt. 5
Topeka, KS—Forbes Field, VOR/DME or TACAN RWY 21, Amdt. 6
Topeka, KS—Forbes Field, NDB RWY 13, Amdt. 5
Topeka, KS—Forbes Field, NDB RWY 31, Amdt. 7
Topeka, KS—Forbes Field, ILS RWY 31, Amdt. 8
Topeka, KS—Forbes Field, RNAV RWY 13, Amdt. 3
Topeka, KS—Philip Billard Muni, VOR RWY 22, Amdt. 19
Topeka, KS—Philip Billard Muni, LOC BC RWY 31, Amdt. 18
Topeka, KS—Philip Billard Muni, NDB RWY 13, Amdt. 28
Topeka, KS—Philip Billard Muni, ILS RWY 13, Amdt. 30
Topeka, KS—Philip Billard Muni, RNAV RWY 18, Amdt. 6
Sulphur, LA—Southland Field, VOR/DME-A, Amdt. 1
Seward, NE—Seward Municipal, NDB RWY 16, Amdt. 1
Seward, NE—Seward Municipal, NDB RWY 34, Amdt. 1
Charlotte, NC—Charlotte/Douglas Intl, VOR/DME RWY 23, Orig.
Lexington, NC—Lexington Muni, VOR-A, Amdt. 4
Lexington, NC—Lexington Muni, VOR/DME RWY 8, Amdt. 6
Lexington, NC—Lexington Muni, NDB RWY 8, Amdt. 5
Raleigh/Durham, NC—Raleigh/Durham, ILS RWY 23R, Amdt. 6
Spartanburg, SC—Spartanburg-Downtown Memorial, VOR-B, Amdt. 2
Spartanburg, SC—Spartanburg-Downtown Memorial, LOC RWY 4, Amdt. 2
Spartanburg, SC—Spartanburg-Downtown Memorial, NDB-A, Amdt. 8
Spartanburg, SC—Spartanburg-Downtown Memorial, RNAV RWY 4, Amdt. 6
Houston, TX—William P. Hobby, VOR RWY 12R, Amdt. 17
Houston, TX—William P. Hobby, VOR/DME RWY 4, Amdt. 16
Houston, TX—William P. Hobby, VOR/DME RWY 22, Amdt. 22
Houston, TX—William P. Hobby, VOR/DME RWY 30L, Amdt. 15
Houston, TX—William P. Hobby, VOR/DME RWY 35, Amdt. 1
Houston, TX—William P. Hobby, LOC BC RWY 22, Amdt. 2
Houston, TX—William P. Hobby, NDB RWY 4, Amdt. 31
Houston, TX—William P. Hobby, ILS RWY 4, Amdt. 35
Houston, TX—William P. Hobby, ILS RWY 12R, Amdt. 10
Houston, TX—William P. Hobby, ILS RWY 30L, Amdt. 1
Sulphur Springs, TX—Sulphur Springs Muni, VOR-A, Amdt. 3
Sulphur Springs, TX—Sulphur Springs Muni, VOR/DME-B, Amdt. 4
Sulphur Springs, TX—Sulphur Springs, NDB RWY 18, Amdt. 3
Tyler, TX—Tyler Pounds Field, VOR/DME RWY 4, Amdt. 1
Tyler, TX—Tyler Pounds Field, VOR/DME RWY 22, Amdt. 1
Tyler, TX—Tyler Pounds Field, LOC BC RWY 31, Amdt. 18
Tyler, TX—Tyler Pounds Field, NDB RWY 13, Amdt. 15

Tyler, TX—Tyler Pounds Field, ILS RWY 13, Amdt. 18
Van Horn, TX—Culberson County, NDB RWY 21, Amdt. 1
Blanding, UT—Blanding Muni, NDB RWY 35, Amdt. 7
Salt Lake City, UT—Salt Lake City Intl, ILS RWY 34L, Amdt. 39

* * * *Effective July 26, 1990*

Blytheville, AR—Blytheville Muni, NDB RWY 18, Orig.
Blytheville, AR—Blytheville Muni, NDB RWY 36, Orig.
Moline, IL—Quad-City, LOC RWY 27, Amdt. 6
Moline, IL—Quad-City, NDB RWY 9, Amdt. 27
Moline, IL—Quad-City, ILS RWY 9, Amdt. 29
Fort Dodge, IA—Fort Dodge Regional, RNAV, RWY 6, Amdt. 6
Cleveland, OH—Burke Lakefront, NDB RWY 24R, Amdt. 6, CANCELLED
Cleveland, OH—Burke Lakefront, NDB RWY 24R, Orig.
Latrobe, PA—Westmoreland County, NDB RWY 23, Amdt. 12
Latrobe, PA—Westmoreland County, ILS RWY 23, Amdt. 13
Richmond, VA—Chesterfield County, VOR RWY 15, Amdt. 8
Richmond, VA—Chesterfield County, LOC RWY 33, Orig.
Richmond, VA—Chesterfield County, SDF RWY 33, Amdt. 3, CANCELLED
Richmond, VA—Chesterfield County, NDB RWY 33, Amdt. 6
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN RWY 13, Amdt. 22
Madison, WI—Dane County Regional-Truax Field, VOR or TACAN RWY 31, Amdt. 23
Madison, WI—Dane County Regional-Truax Field, ILS RWY 18, Amdt. 6
Madison, WI—Dane County Regional-Truax Field, ILS RWY 36, Amdt. 28

* * * *Effective June 11, 1990*

Washington, DC—Dulles Intl, ILS RWY 12, Amdt. 5
Washington, DC—Dulles Intl, CONVERGING ILS RWY 12, Amdt. 1
Washington, DC—Dulles Intl, ILS RWY 19L, Amdt. 9
Washington, DC—Dulles Intl, CONVERGING ILS RWY 19L, Amdt. 2
Washington, DC—Dulles Intl, ILS RWY 19R, Amdt. 21
Washington, DC—Dulles Intl, CONVERGING ILS RWY 19R, Amdt. 2

The FAA published an Amendment in Docket No. 26261, Amdt. No. 1428 to Part 97 of the Federal Aviation Regulations (Change Notice Page 23; dated 28 JUN 90) under § 97.27 effective 28 JUN 90, which is hereby amended as follows:

Burbank, CA, Burbank-Glendale-Pasadena, ILS RWY 8, Amdt. 34, Change effective Date to 26 JUL 90.

[FR Doc. 90-15999 Filed 7-9-90; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 11, 134, 158, and 159

[T.D. 90-51]

Country of Origin Marking; Conforming Amendments

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current, this document makes certain conforming changes which are necessary because of certain provisions of the Trade and Tariff Act of 1984. The changes merely conform citations in the regulations to existing law.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Commercial Rulings Division, (202) 566-2938.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to keep its regulations current, the Customs Service has determined that certain legislation actions require conforming amendments to the Customs Regulations contained in chapter I, title 19, Code of Federal Regulations (19 CFR chapter I).

Section 207 of Public Law 98-573, the Trade and Tariff Act of 1984, amended section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), to add new paragraphs (c), (d), and (e), and redesignated existing paragraphs (c), (d), and (e) as (f), (g), and (h), respectively. This document reflects these latter changes by amending certain sections of parts 11, 134, 158, and 159, Customs Regulations (19 CFR parts 11, 134, 158, and 159), which refer to section 304 (c), (d), and (e). These conforming amendments to the regulations remove references to section 304(c), 304(d), and 304(e), and replace them with section 304(f), 304(g), and 304(h), as appropriate.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Since these amendments are nonsubstantive changes which merely conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. is not required.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, the "Regulatory Flexibility Act." That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Parts 11, 134, 158, and 159

Customs duties and inspections; Marking.

Amendments to the Regulations

Accordingly, parts 11, 134, 158, and 159, of the Customs Regulations (19 CFR parts 11, 134, 158, and 159) are amended as set forth below:

PART 11—PACKING AND STAMPING; MARKING

1. The authority citation for part 11 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, General Note 9, Harmonized Tariff Schedule of the United States.

§ 11.9 [Amended]

2. In § 11.9(a) remove the citation "Section 304(c), Tariff Act of 1930, as amended" and add, in its place, "19 U.S.C. 1304(f)".

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1304, 1624.

§ 134.2 [Amended]

2. In § 134.2 remove the citation "paragraph (c) of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304(c))" and add, in its place, "19 U.S.C. 1304(f)".

§ 134.3 [Amended]

3. In § 134.3(a) remove the citation "19 U.S.C. 1304(c)" and add, in its place, "19 U.S.C. 1304(f)".

§ 134.4 [Amended]

4. In § 134.4 remove the citation "section 304(e), Tariff Act of 1930, as amended (19 U.S.C. 1304(e))" and add, in its place, 19 U.S.C. 1304(h)".

§ 134.53 [Amended]

5. In § 134.53(a)(2) in the first sentence, remove the citation "19 U.S.C. 1304(c)" and add, in its place, "19 U.S.C. 1304(f)". In the last sentence, remove the citation "19 U.S.C. 1304 (c) and (d)" and add, in its place, "19 U.S.C. 1304 (f) and (g)".

§ 134.54 [Amended]

6. In § 134.54(c) remove the citation "section 304(c) of the Tariff Act of 1930, as amended (19 U.S.C. (c))" and add, in its place, "19 U.S.C. 1304(f)".

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

1. The authority citation for part 158 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, subpart C also issued under 19 U.S.C. 1563, unless otherwise noted.

§ 158.45 [Amended]

2. In § 158.45(d) remove the citation "section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c))" and add, in its place, "section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f))".

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 372. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

§ 159.46 [Amended]

2. In § 159.46(a) remove the citation "section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c)" and add, in its place, "section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f))".

Approved June 19, 1990.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-15956 Filed 7-9-90; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 12

[T.D. 90-50]

RIN 1515-AA86

Customs Regulation Amendment to the Definition of Switchblade Knives

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to switchblade knives. Switchblade knives are prohibited entry into the United States by the Switchblade Knife Act. This document clarifies the definition of switchblade knives and related materials which are included within the prohibitions of the Act. The amendment also includes "Balisong" and "ballistic" knives among the prohibited weapons. The Customs position that Balisong knives are included within the legislative intent and current regulatory prohibition has been upheld by the courts and Customs has decided to clarify its position by amending the regulations. Inclusion of "ballistic" knives reflects direct congressional action. Notice of the Proposed Rulemaking was published in the **Federal Register**. The comment period was extended to insure that interested individuals had an adequate opportunity to submit comments. The comments received have been reviewed and have been considered in development of this final rule.

EFFECTIVE DATE: August 9, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Value, Special Programs and Admissibility Branch, Commercial Rulings Division, (202) 566-5765.

SUPPLEMENTARY INFORMATION:

Background

The Switchblade Knife Act (15 U.S.C. 1241-1245) (the Act) prohibits the introduction, manufacture, transportation or introduction into interstate commerce of any switchblade knife. To implement the law, Customs adopted regulations which followed the legislative language extremely closely (19 CFR 12.95-12.103).

As a result of congressional action and recent court decisions which upheld the long-standing Customs position on the scope of the legislative prohibition, a decision was made to amend the regulations so that they would more closely reflect the legislative prohibition and judicial decisions. A Notice of Proposed Rulemaking was published in the **Federal Register** on August 18, 1989 (54 FR 34186). Because some organizations requested an extension of time to allow their members an opportunity to send comments, a document was published in the **Federal Register** on October 27, 1989 (54 FR 43826) extending the comment period to December 17, 1989. The comments which were received have been analyzed and considered in the development of these final regulations.

Analysis of Comments

Comments were received from 62 different sources. Several comments were written in the apparent belief that Customs was imposing restrictions on switchblade knives on its own initiative and not in response to congressional direction. Because the regulations are based on the legislative mandate, a consideration of the propriety of such regulations is unnecessary. Many other comments were identical in content and different only in the signature block, but nevertheless were considered before adopting this final rule.

Comment. Thirty-four comments objected to the use of the phrase "but not limited to" in the definition of "switchblade knife" (§ 12.95(a)(1)). Apparently, this phrase was interpreted as an attempt by Customs to extend the legislative prohibition against switchblade knives to all knives. This was not Customs intent. Customs has no desire to limit the importation of knives and knife parts, so long as those articles are not prohibited by the Switchblade Knife Act. The phrase was used in the proposed regulation to indicate that the prohibition of the Act extended to knives marketed under various names. Because the regulation could not include every possible name under which a knife prohibited by the Act might be marketed, Customs did not want it to appear that the definition was intended to be an all-inclusive listing of prohibited knives. To avoid the confusion, the regulatory language has been modified to indicate that the prohibition applies to the class of knives which are sometimes referred to as "switchblade, Balisong, butterfly, gravity or ballistic" and have the characteristics or identities which are described in remaining portions of the regulation.

Comment. Seventeen comments objected to Customs including Balisong knives, butterfly knives, gravity knives and parts for these knives within the definition of "switchblade knife". The commenters stated that the inclusion of these articles was an improper expansion of the Switchblade Knife Act.

Response. Customs has consistently maintained that the congressional intent

in enacting the Switchblade Knife Act was to prohibit the importation and interstate transportation of all types of knives which shared the characteristics of concealability and the ability to be quickly and easily converted into a weapon. This position has been upheld in judicial decisions (see *Taylor* v. *U.S.*, 848 F.2d 715 (6th Cir. 1988)). By expressly including identifiable categories of prohibited knives, as well as providing notice that the prohibition extends to parts and unassembled knives, Customs is clarifying its position for the public, not expanding the scope of the Act.

Comment. Four comments objected to the proposed amendment (and, in effect, to the underlying Switchblade Knife Act itself) as being ineffective in fighting crime, under the theory that most criminals seeking a weapon will still be able to find one or use a kitchen knife or even a sharpened piece of metal.

Response. Customs believes that these comments are beyond the scope of the amendment.

Comment. Seven comments were received from persons in the cutlery manufacturing or repair business which expressed concern that the amendment would impair their ability to import knife parts and thus adversely affect their businesses.

Response. The amendments to the regulations will have no impact on the ability of businesses or persons to import any knives or knife replacement parts which are not prohibited by the Switchblade Knife Act.

Comment. Two comments expressed concern that Customs might prohibit the importation of all folding knives.

Response. Customs will not prohibit the importation of ordinary folding knives designed for utilitarian purposes.

Determination

After consideration of all the comments received in response to publication of the notice of proposed rulemaking, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications discussed.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Switchblade knives.

Amendment to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 will continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

2. The specific authority for §§ 12.95–12.103 is revised to read as follows:

§§ 12.95–12.103 also issued under 15 U.S.C. 1241–1245.

3. Section 12.95 is amended by revising paragraph (a) to read as follows:

§ 12.95 Definitions.

* * * * *

(a) *Switchblade knife.* "Switchblade knife" means any imported knife, or components thereof, or any class of imported knife, including "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof.

* * * * *

§ 12.96 [Amended]

4. In § 12.96(b) remove the words "the Act of August 12, 1958 (15 U.S.C. 1241–1244)" and add, in their place, the words "15 U.S.C. 1241–1245".

5. Section 12.97 is revised to read as follows:

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. 1595a(c).

6. Section 12.98 is amended by revising the introductory text and revising paragraph (c) to read as follows:

§ 12.98 Importations permitted by statutory exceptions.

The importation of switchblade knives is permitted by 15 U.S.C. 1244, when:

* * * * *

(c) A switchblade knife, other than a ballistic knife, having a blade not exceeding 3 inches in length is in the possession of and is being transported on the person of an individual who has only one arm.

§ 12.100 [Amended]

7. In § 12.100(b) remove the words "section 4 of the Act of August 12, 1958".

§ 12.101 [Amended]

8. In § 12.101(a) remove the words "section 545, title 18, United States Code" and add, in their place, the words "19 U.S.C. 1595a(c)".

§ 12.103 [Amended]

9. In § 12.103 remove the words "the Act of August 12, 1958 (15 U.S.C. 1241–1244)" and add, in their place, the words "15 U.S.C. 1241–1245".

Approved: July 3, 1990.

Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 90–15957 Filed 7–9–90; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 350

[DoD Directive 5137.1]

Assistant Secretary of Defense for Command, Control, Communications, and Intelligence

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document is a revision of the roles, functions, responsibilities, and authorities of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). The revision also establishes the ASD (C3I) as the principal staff assistant and advisor to the Under Secretary of Defense (Acquisition) (USD(A)) for those aspects of the C3I mission that relate to USD(A) functions and responsibilities.

EFFECTIVE DATES: March 27, 1990.

ADDRESSES: Office of the Director, Administration and Management, Organizational and Management Planning.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, telephone (202) 695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 350

Organizational and functions.

Accordingly, 32 CFR part 350 is revised to read as follows:

PART 350—ASSISTANT SECRETARY OF DEFENSE FOR COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE (C3I)

Sec.

Authority: 10 U.S.C. 138.

§ 350.1 Purpose.

(a) This part implements 10 U.S.C., which establishes the position of Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)). The principal duty of the ASD(C3I) shall be the overall supervision of the C3I affairs of the Department of Defense.

(b) It assigns responsibilities, functions, relationships, and authorities, as prescribed herein, pursuant to the authority vested in the Secretary of Defense by 10 U.S.C.

§ 350.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD); the Military Departments; the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies; and the DoD Field Activities.

§ 350.3 Responsibilities.

(a) The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)) is the principal staff assistant and advisor to the Secretary of Defense for C3I policy, requirements, priorities, systems, resources, and programs, including related warning and reconnaissance activities, and those national programs and intelligence-related activities for which the Secretary of Defense has execution authority. This responsibility does not apply to C3 systems that are integrally designed into weapons systems, are unique to and usually delivered with, or as part of an aircraft, missile complex, ship, tank, etc., the costs of which normally are included in the costs of weapons systems. This responsibility does not include operational direction of C3I activities, except as provided in this part.

(b) The ASD(C3I) shall serve as the principal focus for staff coordination on all matters concerning these areas within the Department of Defense, with other Government Departments and Agencies, and with foreign governments and international organizations to which the United States is party. The ASD(C3I) also serves as principal staff assistant in carrying out the responsibilities of the Secretary of Defense as Executive Agent for the National Communications System (NCS) and is the principal DoD official responsible for preparing and defending the Department's C3I program before the Congress. For each assigned area, the ASD(C3I) shall:

(1) Develop policies and issue guidance to DoD Components.

(2) Review, validate, and recommend requirements and priorities that ensure that DoD user requirements are fully considered in the development of national C3I plans and programs.

(3) Provide guidance and management and technical oversight for all C3I projects, programs, and systems being acquired by, or for the use of, the Department of Defense and its components.

(4) Participate in DoD planning, programming, and budgeting activities, and review proposed DoD resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved programs.

(5) Review and advise the Secretary of Defense on national programs that support the Department of Defense and/or for which the Secretary of Defense has execution authority; monitor and evaluate the responsiveness of such programs to DoD requirements, particularly their readiness to support military operations.

(6) Oversee C3I training and career development programs to ensure that trained manpower is available to support DoD C3I mission needs, including manpower requirements for projected systems.

(7) Promote coordination, cooperation and cross-Service management of joint programs to ensure essential interoperability is achieved within the Department of Defense and between the Department of Defense and other Federal Agencies and the civilian community.

(8) Provide DoD representation on intergovernmental and international organizations dealing with C3I matters, and represent the Department of Defense in these mission areas to foreign governments.

(9) Recommend, advise, and provide assistance to other OSD staff elements on C3I matters relevant to the execution of their assigned responsibilities, including the execution of DoD-wide programs to improve standards of performance, economy, and efficiency.

(10) Assess the responsiveness of intelligence products to the needs of Department of Defense users.

(11) Perform such other duties as the Secretary of Defense may assign.

§ 350.4 Functions.

The ASD(C3I) shall carry out the responsibilities described in § 350.3 for the following functional areas:

(a) Strategic and theater nuclear forces command and control.

(b) Theater and tactical command and control.

(c) C3I-related space systems.

(d) Special technology and systems.

(e) Telecommunications and C3I-related computer-based information systems.

(f) Identification, navigation, and position fixing systems.

(g) Electronic combat, including electronic countermeasures.

(h) Air traffic control and airspace management.

(i) Surveillance, warning, and reconnaissance architectures.

(j) North Atlantic Treaty Organization (NATO) C3I architectures and systems.

(k) Communications security (COMSEC) and computer systems security.

(l) Intelligence collection and processing programs, systems, and equipment.

(m) National communications systems, including frequency management.

(n) Mapping, charting, and geodesy.

(o) Integration and/or interface of national and tactical C3I.

(p) C3I and DoD foreign language training and C3I career development.

§ 350.5 Relationships.

(a) In the performance of assigned duties, the ASD(C3I) shall:

(1) Exercise direction, authority, and control over the Defense Support Project Office, and, subject to the direction, authority and control of the USD(A), over the Defense Mapping Agency and the Defense Communications Agency.

(2) Exercise staff supervision over:

(i) The Defense Intelligence Agency and the National Security Agency/Central Security Service.

(ii) Air Force and Navy Special Intelligence Programs.

(iii) Defense communications and intelligence functions assigned to the Military Departments.

(iv) Such other DoD Agencies and activities under the purview of the USD(A), as the latter may from time to time designate.

(3) Provide technical guidance to the Electromagnetic Compatibility Analysis Center.

(4) Coordinate and exchange information with other OSD officials and heads of DoD Components exercising collateral or related functions.

(5) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum readiness, sustainability, efficiency, and economy.

(6) Work closely with the Director of Central Intelligence to ensure effective complementarity and mutual support between DoD intelligence programs, including DoD programs in the National Foreign Intelligence Program, and non-DoD intelligence programs.

(7) Be subject to the direction, authority, and control of the Under Secretary of Defense for Acquisition for the ASD(C3I)'s acquisition-related activities as provided in DoD Directive 5134.1.[1]

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(C3I) on all matters related to the functions cited in § 350.4.

§ 350.6 Authorities.

The ASD(C3I) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M,[2] that implement policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Commands shall be issued through the CJCS.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 7750.5,[3] as necessary, in carrying out assigned functions.

(c) Communicate directly with heads of DoD Components. Communications to the Commanders in Chief of the Unified and Specified Commands shall be coordinated through the CJCS.

(d) Establish arrangements and appoint representation for DoD participation in nondefense governmental programs for which the ASD(C3I) is assigned DoD cognizance.

(e) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

Dated: July 5, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-15963 Filed 7-9-90; 8:45 am]

BILLING CODE 3810-01-M

[2] See footnote 1 to § 350.5(a)(7).

[3] See footnote 1 to § 350.5(a)(7).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13-90-07]

Safety Zone; Lake Washington, Puget Sound and Montlake Cut/Union Bay; Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard will establish Safety Zones for the rowing and yachting venues, and waters adjacent to Husky Stadium for the 1990 Goodwill Games to be held in Seattle, WA. A large volume of recreational boaters is anticipated to congregate in the vicinity of the Husky Stadium and venue sites during practice sessions and on race days. In order to minimize safety hazards to the event participants and spectators, a Safety Zone will be established in Lake Washington for the rowing venue 17 to 20 July 1990 from 7 a.m. to 5 p.m., on 21 July 1990 from 7 a.m. to 5:30 p.m. and on 22 July 1990 from 7 a.m. to 3:15 p.m. Another Safety Zone will be established in Puget Sound between Shilshole Bay and Richmond Beach for the yachting venue 28 to 31 July 1990 from 11 a.m. to 8 p.m. and 01 to 04 August 1990 from 7 a.m. to 8 p.m. All times in this rulemkaing are Pacific Daylight Time. The boundaries for the Lake Washington and Montlake Cut Safety Zones are from nautical chart 18447, North American Datum of 1983. The boundaries for the Puget Sound Safety Zone are from nautical chart 18446, North American Datum of 1927. If vessel traffic density poses a threat to navigational safety in Montlake Cut/Union Bay due to transiting vessel traffic and Husky Stadium events from 17 July through 05 August 1990, a safety zone will be established until normal operation conditions are restored. The impact to commercial traffic is expected to be minimal. This rule is designed to promote the safety of life and property on navigable waters during the events.

EFFECTIVE DATE: This rule will become effective 17 July 1990, and expires 30 August 1990.

FOR FURTHER INFORMATION CONTACT: LT Len Radziwanowicz, USCG, Marine Safety Division, Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. Telephone (206) 442-1711.

SUPPLEMENTARY INFORMATION: On May 14, 1990 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (55 FR 19959). Interested persons were requested to submit comments. Seven comments were received.

Drafting Information

The drafters of this notice are LT Len Radziwanowicz, project officer, Marine Safety Division, Thirteenth Coast Guard District, and LT D.K. Schram, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Comments

Montlake Cut/Union Bay: Most of the comments addressed the safety zone in Montlake Cut/Union Bay. There was concern that the Montlake Cut/Union Bay safety zone might close the waterway entirely to pleasure and

commercial traffic from 17 July 1990 to 05 August 1990. To the contrary, the waterway will remain open as usual to vessel traffic unless a hazardous situation develops which will hamper vessel safety. The Coast Guard's intent is to minimize disruption of vessel traffic in Montlake Cut/Union Bay. Therefore, a Safety Zone will only be declared by the captain of the Port Puget Sound in the event vessel traffic congestion should develop into a hazardous situation. The NOAA ship Discover, 303 ft length overall, is scheduled to transit Montlake Cut/Union Bay on July 23, 1990, from 10:45 a.m. to 11:15 a.m. and July 24, 1990 from 11:45 a.m. to 12:15 p.m.

Lake Washington: The rowing venue practice schedule has changed since the publication of the proposed rulemaking. Therefore, minor time modifications were made to the safety zone in Lake Washington to coincide with practice schedule changes. The notice of proposed rulemaking published the times of the safety zone in Lake Washington as 17 to 23 July 1990 from 5 a.m. to 9 a.m. and from noon to 4 p.m. The amended times for the safety zone will be 17 to 20 July 1990 from 7 a.m. to 5 p.m., 21 July 1990, from 7 a.m. to 5:30 p.m. and 22 July 1990, from 7 a.m. to 3:15 p.m.

Puget Sound: The Director of the King County, Washington, Department of Public Safety has requested that the Coast Guard publish its declaration of a restricted area in Puget Sound that coincides with the northern portion of the Coast Guard established Safety Zone as follows:

I, James E. Montgomery, Director of the King County, Washington, Department of Public Safety and Ex Officio Sheriff, in the interests of safe navigation, life safety and the protection of property, do hereby designate a portion of Puget Sound as a restricted area under the authority of King County Code 12.44.200. No person shall operate a vessel or watercraft in that area, except for those engaged in or accompanying Goodwill Games yachting practices and races, or patrol or rescue craft, or in the case of an emergency. This restriction shall be in effect 28 to 31 July 1990 from 11 a.m. to 8 p.m., and 01 to 04 August 1990 from 7 a.m. to 8 p.m. The area subject to these restrictions is described as follows: Beginning at the point on the shore of Puget Sound which is northernmost in the City of Seattle, thence meandering northward along the shore of Puget Sound to the north boundary of King County, thence west along said boundary into Puget Sound to said boundary's intersection with position longitude 122 degrees 24 minutes 51 seconds, West, thence southward 190 degrees to the north boundary of the Seattle City limits, thence eastward along said boundary to the shore of Puget Sound, the true point of beginning. The Coast Guard and King County police have entered into an agreement to enforce this safety zone/restricted area.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. The regulation affects only spectators, participants and a proportionally small number of recreational boaters, and applies to a small area of Lake Washington and Puget Sound. There is minimal commercial traffic in the designated safety zone areas. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.T1303 is added to read as follows:

§ 165.T1303 Safety Zone; Lake Washington, Puget Sound and Montlake Cut/Union Bay; Seattle, Washington.

(a) *Location.* The following areas are safety zones:

(1) Lake Washington. The waters of Lake Washington bounded by Mercer Island (Lacey V. Murrow) Bridge, the western shore of Lake Washington, and north of an east/west line drawn tangent to Bailey Peninsula starting at the northernmost point and ending at the shoreline of Mercer Island at Latitude 47°33'45" N, Longitude 122°13'52" W. The safety zone area will be divided into two zones. The zones are separated by a log boom and a line from the southeast corner of the boom to the northeast tip of Bailey Peninsula. The western zone is designated Zone I, the eastern zone is designated Zone II.

(2) Puget Sound. The waters of Puget Sound within an area described by a line drawn from the southern side of the Shilshole public boat ramp to Shilshole Boat Basin Light 2 (Latitude 47°41'16,3" N., Longitude 122°24'13.2" W.), thence 290 degrees true to position Latitude 47°41'42" N., Longitude 122°25'58" W., thence northward 010 degrees true, to position Latitude 47°46'00" N., Longitude 122°24'51" W., thence east 090 degrees true to the intersection of the shoreline, thence meandering southward along the shoreline to the Shilshole public boat ramp.

(3) Montlake Cut/Union Bay. The waters of Montlake Cut/Union Bay with an eastern boundary defined by a line which begins at the southernmost tip of Webster Point, passes through Webster Point light number 33, thence due south to the State Route 520 bridge, thence westerly along State Route 520 bridge to Foster Island. The western boundary is a line drawn due north from the vessel traffic light on the west end of Montlake Cut, Latitude 47°38'49.2" N., Longitude 122°18'32.5" W.

(b) *Effective periods.* The safety zone shall be in effect in accordance with the following schedule.

(1) *Lake Washington.* 17 to 20 July 1990 from 7 a.m. to 5 p.m., 21 July 1990 from, 7 a.m. to 5:30 p.m. and 22 July 1990 from 7 a.m. to 3:15 p.m.

(2) *Puget Sound.* 28 to 31 July 1990 from 11 a.m. to 8 p.m.; and from 01 to 04 August 1990 from 7 a.m. to 8 p.m.

(3) *Montlake Cut/Union Bay.* As ordered by the Captain of the Port, Puget Sound during the period of 17 July to 05 August 1990, from 8 a.m. to 8 p.m.

(c) *Regulations*—(1) *General.* The following procedures, restrictions and/or special operating requirements are applicable to all three of the safety zones described above:

(i) The Coast Guard will maintain a patrol consisting of Coast Guard and Coast Guard Auxiliary vessels in the safety zones. Each safety zone will be enforced by the predesignated on-scene Coast Guard Patrol Commander who is a representative of the Captain of the Port Puget Sound, Seattle, Washington. The Patrol Commander is empowered to control the movement of vessels on the race course and in the adjoining waters during the periods this regulation is in effect. Vessels in the vicinity of this safety zone shall maneuver and anchor as directed by Coast Guard Officers or Petty Officers.

(ii) A succession of sharp short signals by whistle or horn from vessels patrolling the areas under the direction of the Patrol Commander shall serve as the stop signal. Vessels signaled shall

stop and comply with the orders of the patrol vessel.

(iii) Vessels are encouraged to maintain a listening watch on VHF-FM Channels 16 and 22 for safety advisories.

(iv) Daily times of the zone(s) may be altered by the on-scene Coast Guard Patrol Commander as necessary.

(2) *Lake Washington.* These rules apply only when the safety zone is in effect.

(i) Only authorized vessels are allowed to enter Zone I during the hours this regulation is in effect.

(ii) During the period this safety zone is in effect, vessels may not pass under the Mercer Island Bridge at the west high rise.

(iii) During the times in which the regulation is in effect, swimming, wading, or otherwise entering the water in Zone I by any person is prohibited.

(iv) Unless otherwise directed by the Patrol Commander, vessels may enter Zone II, as long as they comply with the following requirements.

(v) Vessels proceeding in either Zone I or Zone II during the hours this regulation is in effect shall do so only at speeds which will create minimum wake, seven (07) miles per hour or less. The speed restriction also applies to vessels leaving either Zone I or II at the completion of the daily racing activities. This maximum speed may be reduced at the discretion of the Patrol Commander.

(3) *Puget Sound.* These rules apply only when the safety zone is in effect.

(i) Only authorized vessels are allowed to enter the safety zone during hours this regulation is in effect.

(ii) During the launch and recovery of participant vessels, the north breakwater entrance to Shilshole Bay Marina will be closed to the public, as directed by the Patrol Commander. Once participant vessels have cleared the north breakwater entrance to Shilshole Bay Marina the area will be open for public use. Vessels shall proceed in a due east or west direction upon entering or leaving the northern Shilshole Bay Marina area to avoid entering the southernmost portion of the safety zone.

(4) *Montlake/Union Bay.* During the time the Safety Zone is in effect, the Patrol Commander will monitor vessel traffic for the purposes of waterway safety and control traffic as deemed necessary. This may include prohibiting vessels from entering the Safety Zone, restricting where vessels may anchor or moor, restricting where vessels may operate within the Safety Zone, and directing vessels to depart the Safety Zone.

Dated: June 27, 1990.

R.K. Peschel,

Commander, Thirteenth Coast Guard District (Acting), DOT—U.S. Coast Guard.

[FR Doc. 90-15793 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-14-m

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301, 306

[CRT Docket No. 90-4-90JL]

Determination of Negotiated Jukebox Licenses

AGENCY: Copyright Royalty Tribunal.

ACTION: Final Rule.

SUMMARY: As a result of the voluntary agreement between ASCAP/BMI/SESAC and AMOA, the jukebox compulsory license was suspended through 1999. The Tribunal is amending certain of its rules to conform them to the action taken by the Tribunal when it suspended the jukebox compulsory license. As a consequence, the Tribunal will not engage in any rate setting for the jukebox license for 10 years.

EFFECTIVE DATE: August 9, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202) 653-5175.

SUPPLEMENTARY INFORMATION: The Berne Convention Implementation Act of 1988 provided a procedure by which the jukebox compulsory license could be suspended if the owners and users of music on jukeboxes were to reach their own voluntary license agreement.

On March 28, 1990, the Tribunal published in the **Federal Register** its finding that an agreement between the three performing rights societies, ASCAP, BMI and SESAC, and the trade association representing jukebox operators, AMOA, had been reached and that, consequently, the jukebox compulsory license was suspended for the term of the voluntary agreement—through December 31, 1999. 55 FR 11429.

Following the action taken by the Tribunal on March 28, 1990, the tribunal proposed to change certain of its rules concerning jukebox rates. 55 FR 18131 (May 1, 1990). However, no rule changes were proposed concerning jukebox royalty distributions because one more distribution remains to be made later this year.

The Tribunal received a joint comment from the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc. (SESAC) and the Amusement and Music Operators Association (AMOA).

In general, ASCAP, BMI, SESAC and AMOA support the Tribunal's proposed rule changes, but have suggested minor modifications concerning the identification of the ASCAP/BMI/SEAC-AMOA agreement, its duration, and the receipt by the Tribunal of rate adjustment petitions. The Tribunal agrees with the commenters' suggestions and has decided to adopt its proposed rule changes and those of the commenters with some minor editorial changes.

List of Subjects

37 CFR Part 301

Administrative practice and procedure, copyright, jukeboxes, Organization and functions (Government agencies), Recordings.

37 CFR Part 301

Copyright, Jukeboxes.

For the reasons set forth in the preamble, the Tribunal amends 37 CFR part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for part 301 continues to read as follows:

Authority: 17 U.S.C. 803(a).

2. Section 301.1 is revised as follows:

§ 301.1 Purpose.

The Copyright Royalty Tribunal (Tribunal) is an independent agency in the Legislative Branch, created by Public Law 94-553 of October 19, 1976. The Tribunal's statutory responsibilities are:

(a) To make determinations concerning copyright royalty rates in the areas of cable television covered by 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for the making and distributing of phonorecords (17 U.S.C. 115).

(c) To make determinations concerning copyright royalty rates for coin-operated phonorecord players (jukeboxes) whenever a sufficient number of voluntary license agreements between jukebox operators and the copyright owners of musical works played on jukeboxes are not in effect (17 U.S.C. 116, 116A).

(d) To establish and later make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations of certain copyrighted works (17 U.S.C. 118).

(e) To distribute cable television, jukebox, and satellite carrier royalties under 17 U.S.C. 111, 116, and 119, respectively, deposited with the Register of Copyrights.

(f) To monitor and assist the negotiation of an adjustment to the satellite carrier royalty rates, and/or to assist and review the arbitration of an adjustment to the satellite carrier royalty rates (17 U.S.C. 119).

3. Section 301.61(b)(3) is revised to read as follows:

§ 301.61 Commencement of adjustment proceedings.

* * * * *

(b) * * *

(3) Coin-operated phonorecord players (jukeboxes): during 1990 and each subsequent 10th calendar year; provided that no petition may be filed during any period in which the Tribunal has announced pursuant to 17 U.S.C. 116A that the jukebox license is suspended.

* * * * *

4. Section 301.63 is revised to read as follows:

§ 301.63 Consideration of petition.

(a) To allow time for parties to settle their differences regarding rate adjustments, the Tribunal may delay considering any petition before the expiration of:

(1) 90 days from the start of the calendar year specified in § 301.61(b), or

(2) 90 days from the date of termination or expiration of the negotiated jukebox license which provided the basis for the suspension of the jukebox compulsory license specified in § 301.61(b)(3), or

(3) 90 days from the effective date of the Federal Communications Commission action specified in § 301.61(c).

(b) Similar petitions may be joined together by the Tribunal for the purpose of determining "significant interest," and the Tribunal may permit written comments or a hearing on pending petitions.

PART 306—ADJUSTMENT OF ROYALTY RATES FOR COIN-OPERATED PHONORECORD PLAYERS

5. The authority citation for part 306 is amended to read as follows:

Authority: 17 U.S.C. 116A, 801(b)(1) and 804(e).

6. In § 306.3, a new paragraph (e) is added as follows:

§ 306.3 Compulsory license fees for coin-operated phonorecord players.

* * * * *

(e) Commencing January 1, 1990, the annual compulsory license fee for a coin-operated phonorecord player is suspended through December 31, 1999, or until such earlier or later time as the March, 1990 license agreement between AMOA and ASCAP/BMI/SESAC is terminated.

Dated: July 3, 1990.

Mario F. Aguero,

Acting Chairman.

[FR Doc. 90-15917 Filed 7-9-90; 8:45 am]

BILLING CODE 1490-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3806-9]

Approval and Promulgation of State Implementation Plans; Wyoming; PM-10 Plan for Group II and Group III Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces that EPA is approving the PM-10 State Implementation Plan (SIP) for the Wyoming Group III areas and the PM-10 Committal SIP for the Lander, Wyoming Group II area. These SIPs were submitted by the State on March 14, 1989, and EPA proposed approval on October 27, 1989 (52 FR 43827). No comments were received. The State has adequately incorporated the federal Group II and Group III area PM-10 requirements into Wyoming's air pollution control program, which merits EPA's approval of these SIP revisions.

EFFECTIVE DATE: This rule will become effective on August 9, 1990.

ADDRESSES: Copies of the applicable documentation are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405

Wyoming Department of Environmental Quality, Air Quality Division, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 293-1769, FTS 330-1769.

SUPPLEMENTARY INFORMATION:

Background

The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the National Ambient Air quality Standards (NAAQS) for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM-10) on July 1, 1987 (52 FR 24634). As a result, states must revise their SIPs to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM-10 NAAQS. Group I areas have violated the PM-10 NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit to EPA for approval full SIPs including control strategies and attainment demonstrations Group II areas are estimated to have a moderate (20%-95%) probability of violating the PM-10 NAAQS, and must commit to monitor for PM-10 and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM-10 NAAQS, and no new control strategy requirements apply.

Wyoming's PM-10 Group III Area SIP

Most of the State of Wyoming has been classified as Group III for PM-10, and on March 14, 1989, the State submitted a Group III SIP to address EPA's Group III SIP requirements.

The submittal contains revisions to section 2, *Definitions,* section 3, *Ambient Particulate Standards,* section 20, *Air Pollution Emergency Episodes,* section 21, *Permit Requirements,* and section 24, *Prevention of Significant Deterioration,* of the Wyoming Air Quality Standards and Regulations (WAQSR) for PM-10. In addition, the State submittal contains the following:

1. The State has adopted the "Wyoming Implementation Plan for PM-10 Ambient Air Quality Standards" which: (1) Outlines Group III requirements, (2) indicates standards and regulation revisions, (3) describes monitoring plans, (4) describes PM-10 monitoring activities in the Trona total

suspended particulates (TSP) nonattainment area (the Trona Industrial area was designated a nonattainment area for EPA's former TSP secondary 24-hour standard but was designated as a PM–10 Group III area by EPA), and (5) commits the resources necessary to implement the plan.

2. The State has adopted "The State of Wyoming State Implementation Plan on Air Quality Surveillance for Inhalable Particulate Matter (PM–10)" which describes, in detail, Wyoming's plan for adhering to EPA's requirements (found in 40 CFR Part 58) for the monitoring of PM–10 particulate matter. The State-wide PM–10 monitoring network design and coverage were approved by EPA Region VIII's Environmental Services Division on March 30, 1989.

3. The State administers a New Source Review (NSR) program for all stationary sources and modifications, including Prevention of Significant Deterioration (PSD) sources. By adopting ambient air quality standards for PM–10, the State has triggered the requirement for preconstruction review by all PSD sources of PM–10.

Additional Information and Commitments Required for the Group III SIP

In the proposed approval notice, EPA indicated that additional information would be required from the State before EPA could grant final approval of the Group II and Group III and SIPs. The State was to re-identify for the public record any other plans and regulations that are being relied upon by the PM–10 SIP to ensure continued compliance with the PM–10 NAAQS. EPA requested this information on November 22, 1989. In response, the State identified in a December 20, 1989, letter those sections in the WAQSR which will serve as the control strategy for PM–10. This submittal fulfilled EPA's requirements.

Although EPA had previously approved Wyoming's State/Local Air Monitoring Station (SLAMS) network for PM–10, EPA became aware that the company-operated particulate monitoring network in the Trona industrial area had not been approved by EPA. Because the State intends to continue particulate monitoring in the Trona area in order to demonstrate attainment with the PM–10 NAAQS, the monitoring network must conform with the applicable EPA monitoring requirements. Region VIII's Environmental Services Division reviewed the Trona network for adequacy, and concluded that the network meets all of the EPA PM–10 monitoring requirements, except for the requirements of 40 CFR part 58, Appendix A (quality assurance (QA)). The State verbally indicated that adequate QA plans for the Trona network were to be submitted to EPA upon receipt from the companies, and that EPA should proceed with final approval of the PM–10 SIPs as it is not a regulatory requirement to withhold approval of a PM–10 SIP until the monitoring network is approved.

After consideration of both the State's position and EPA's general SIP requirements of 40 CFR 51.190 and 51.320 (which require that SIP monitoring be conducted according to EPA's requirements), the State was notified in a March 19, 1990, letter that EPA would proceed with final approval of the Group II and Group III PM–10 SIPs if Wyoming committed to submit adequate QA plans for the Trona area by May 1, 1990. Wyoming submitted this commitment on March 29, 1990, and submitted the QA plans on April 17, 1990. Additionally, Wyoming has been developing an adequate QA plan for the SLAMS PM–10 network which is to be submitted to EPA for approval.

Finally, as described in detail in the proposed rulemaking to this action, EPA is requiring that Wyoming correct deficiencies in the NSR and PSD regulations in order to ensure that the program would adequately protect the PM–10 NAAQS. Wyoming is proceeding to revise the deficient regulations as committed.

Therefore, EPA believes that the existing EPA-approved SIP, the submitted PM–10 Group III SIP, and the commitments identified above fulfill EPA's requirements for PM–10 Group III SIPs and are adequate to demonstrate and maintain compliance with the PM–10 NAAQS in Wyoming's Group III areas.

Wyoming's PM–10 Group II Area SIP

The Lander, Wyoming area has been classified as a Group II area for PM–10. On March 14, 1989, the State submitted a Committal SIP for this area which addresses EPA's Group II SIP requirements by committing Wyoming to the following actions:

A. Gather ambient PM–10 data, at least to an extent consistent with minimum EPA requirements and guidance. The State began to monitor for PM–10 in January 1985, and has committed to continue monitoring in the Committtal SIP. There are two PM–10 monitoring sites and one TSP monitoring site operating in Lander. One of the PM–10 monitors is operated on an every-other-day schedule while the other PM–10 monitor is operated every sixth day. The TSP site is operated on an every sixth day schedule. The Lander PM–10 monitoring network design and coverage have been reviewed, and were approved by the Region VIII Environmental Services Division on March 30, 1989.

B. Analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the Regional Office within 45 days of each exceedance.

C. When two verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM–10 NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the Regional Office.

D. Within 30 days of the notification referred to in "C." above, or by September 1, 1990, whichever comes first, determine whether the existing SIP will assure timely attainment and maintenance of PM–10 standards, and immediately notify the Regional Office.

E. Within six months of the notification referred to in "D." above (if necessary), adopt and submit to EPA a PM–10 control strategy that assures timely attainment and maintenance within a period of three years from approval of this committal SIP.

Final Action

EPA is approving the PM–10 SIP for the Wyoming Group III areas and the PM–10 Committal SIP for the Lander, Wyoming Group II area because these SIPs meet the appropriate EPA requirements.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1990. This action may not be challenged later in proceedings to enfore its requirements. (See section 307(b)(2).)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Sulfur oxides.

Note.—Incorporation by reference of the State Implementation Plan for the State of Wyoming was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 15, 1990.

James J. Scherer,

Acting Regional Administrator.

40 CFR part 52, Subpart ZZ, is amended as follows:

PART 52—[AMENDED]

Subpart ZZ—Wyoming

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2620 is amended by adding paragraph (c)(20) as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(20) A revision to the SIP was submitted by the Administrator of the Wyoming Air Quality Division on March 14, 1989, to address the Group III PM–10 SIP requirements and Group II PM–10 SIP requirements for Lander, Wyoming.

(i) Incorporation by reference.

(A) Amendments to the Wyoming Air Quality Standards and Regulations: section 2 (Definitions) (a)(xxx), section 3 (Ambient Standards for Particulate Matter) (a), section 20 (Air Pollution Emergency Episodes) (b)(ii), section 21 (Permit Requirements for Construction, Modification, and Operation) (c)(ii) and section 24 (Prevention of Significant Deterioration) (a)(xx)(A), (b)(i)(E)(VI)(1.)(c.)(f.)(h.) & (1.), (b)(iii), (b)(iv), (b)(viii), and (b)(xii)(D)(E)(F) & (G), effective February 13, 1989.

(B) March 14, 1989 letter from Charles A. Collins, Administrator of the Wyoming Air Quality Division to James J. Scherer, EPA Region VIII Regional Administrator, identifying the effective date of the above regulation amendments.

[FR Doc. 90–15962 Filed 7–9–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL–3808–4]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations, Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of Final Rulemaking.

SUMMARY: In a February 14, 1989 (54 FR 6733) **Federal Register** notice, USEPA proposed to disapprove a request from the State of Ohio to revise the attainment status designations for Mahoning and Trumbull Counties in Ohio at 40 Code of Federal Regulations (CFR) 81.336 from nonattainment to attainment relative to the ozone National Ambient Air Quality Standard (NAAQS).

Today, USEPA is disapproving the Ohio Environmental Protection Agency's (OEPA) request to redesignate Mahoning and Trumbull Counties to attainment for ozone because the area does not meet all of the requirements for a redesignation to attainment.

EFFECTIVE DATE: This final rulemaking becomes effective on August 9, 1990.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following address: U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

Copies of the supporting materials are also available at: Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Water Mark, P.O. Box 1049, Columbus, Ohio 43266–0149.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (CAA), the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Ohio, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.336. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. Mahoning and Trumbull Counties, Ohio were designated as not attaining the ozone standard on the basis of a measured violation of the ozone NAAQS.[1] For areas designated nonattainment for ozone, a revised ozone SIP was required which satisfies the requirements of section 110(a) and Part D of the CAA, including providing for attainment and maintenance of the ozone NAAQS.

Redesignation Request

On March 1, 1985, pursuant to section 107(d)(5) of the CAA, the OEPA requested that Mahoning and Trumbull Counties be redesignated to attainment for the ozone NAAQS. The OEPA submitted air quality data and several "Reasonable Further Progress" (RFP) reports as evidence that the implemented volatile organic compound (VOC) emission reductions are responsible for the observed air quality improvement in Mahoning and Trumbull Counties.

As it applies to Mahoning and Trumbull Counties, USEPA's policy is to not redesignate an area to attainment if either violations of the standards are found in it or emissions from it contribute to violations downwind.[2] On

[1] The NAAQS for ozone is defined at 40 CFR part 50. The ozone NAAQS is violated when the annual average expected number of daily exceedances of the standard (0.12 parts per million (ppm), 1-hour average) is greater than one (1.0). A daily exceedance occurs when the maximum hourly ozone concentration monitored during a given day exceeds 0.124 ppm (See "Guideline for the Interpretation of Ozone Air Quality Standard," EPA-450/4–79–003, which has been included in the record for this rulemaking action). The expected number of daily exceedances is calculated from the observed number of exceedances by making the assumption that non-monitored days (invalid or incomplete data) have the same fraction of daily exceedances as observed on monitored days (EPA–450/4–79–003).

[2] Specific criteria for ozone redesignation reviews are given in the following USEPA memoranda:

1. December 7, 1979, from Richard G. Rhoads to the Directors of Air and Hazardous Materials Divisions, Region I–X, Subject: Criteria for Ozone Redesignation Under Section 107.

2. April 21, 1983, from Sheldon Meyers to Director of Air Management Divisions, Subject: Section 107 Designations Policy Summary.

3. December 23, 1983, from G.T. Helms to Chiefs of Air Programs Branches, Region I–X, Subject: Section 107 Questions and Answers.

4. April 6, 1987, from Gerald A. Emission, Director, Office of Air Quality Planning and Standards, to the Air Division Directors, Subject: Ozone Redesignation Policy.

The general USEPA policy relevant to ozone redesignation requests is summarized as follows:

1. Generally, the most recent 3 years of quality assured ozone monitoring data are to be considered. The ozone standard cannot be violated at any of the monitoring sites. If 3 years of data are not available, the most recent 8 quarters may be considered as support for a redesignation to attainment provided no exceedances have occurred.

2. The designation given for an area generally applies to whole counties.

3. Urban areas should have a single designation, with the designated area including the entire urbanized area and fringe areas of development. The designation should be based on data from the worst case downwind monitor.

4. The nonattainment area should be of sufficient size to include all significant impacting volatile organic compound (VOC) emission sources.

5. For an area to be redesignated to attainment, the area must have an implemented State Implementation Plan (SIP) which USEPA has fully approved.

For a more detailed discussion of USEPA's redesignation policy and of ozone formation and transport, see 53 FR 52727 (December 29, 1988), which proposed to disapprove Illinois' requested redesignation of Kane and Dupage Counties to attainment for ozone. Also see 54 FR 32078 (August 4, 1989).

February 14, 1989, USEPA proposed to disapprove this redesignation request because of recent violations of the ozone NAAQS monitored at Farrell, Pennsylvania. Farrell, Pennsylvania is adjacent to Mahoning and Trumbull Counties which are upwind from Farrell, i.e. emissions from Mahoning and Trumbull Counties adversely impact Farrell.[3]

During the public comment period of the February 14, 1989, notice, USEPA received several comments. These comments and USEPA responses are discussed below.

Comment: A commenter notes that the State of Ohio submitted its redesignation request for Mahoning and Trumbull Counties on March 1, 1985. The commenter alleged that the CAA (sections 107(d)(2) and 107(d)(5)) requires the USEPA to act on this redesignation request within 60 days of its submission. In addition, the Administrative Procedure Act (section 6(a)) required the USEPA to act within a reasonable time. Nonetheless, the USEPA did not act on the redesignation request for almost 4 years, violating the requirements for expeditious action.

The USEPA is not permitted to profit from its breach of its statutory duties to act within 60 days or in a timely manner. This is a central theme of a line of legal cases beginning with *Duquesne* v. *USEPA*, in which the Court held that a failure by the USEPA to act on a SIP revision within the time specified by section 110(a) of the CAA bars the USEPA from enforcement of the unrevised SIP. The USEPA may not violate its own statutory obligations with impunity, and where such violations exist, the courts may act in a way necessary to ensure that the interests of States and the regulated community are not prejudiced thereby. This point was made explicitly in *NRDC* v. *USEPA*, wherein the Court held that the remedy for an agency violation of its statutory duties was to put the parties, as nearly as possible, in the position they would have been in if the USEPA had complied with its statutory duties. The State of Ohio was entitled to USEPA action within 60 days or a reasonable time after its submission. Putting the State in the position it would have been in if the USEPA had afforded it this right requires the USEPA to consider only the facts as they existed at the time of the redesignation request submission. The data existing at that time showed no violation of the ozone standard in Mahoning and Trumbull Counties.

Response: Section 107(d) of the CAA does not impose a 60 day timeframe or limit for responding to a redesignation request. The 60 day timeframe for USEPA action set forth in section 107(d)(2) applies only to the "list under paragraph 1 of this subsection." Paragraph 1 deals only with the initial promulgation of air quality control regions. The subsequent redesignation of these regions is addressed by section 107(d)(5), which is silent as to any deadline for USEPA action.

Although the Administrative Procedure Act requires action by an agency in a reasonable time, it does not specify a deadline for such action. The Administrative Procedure Act, therefore, does not provide a test to measure USEPA's timeliness in this case.

USEPA has certain internal guidelines on appropriate timeframes for rulemaking action. See, generally, 55 FR 5824, 5826–5828 (1990). In fact, however, USEPA has found that in many cases involving SIP disaprovals containing major issues of national policy, it often takes significantly longer to process SIP actions, and USEPA does not necessarily consider such additional time unreasonable. Because the Administrative Procedures Act does not define the reasonable time for agency action, each case must be evaluated on its own merits to determine whether the agency acted within a reasonable time. Further, nothing in section 107(d) bars USEPA from taking action on a redesignation request at any time, based upon the information available to the agency at the time it acts. Even if USEPA had missed a required deadline for acting, the agency simply could not approve a redesignation request that fails to comply with all relevant agency guidance concerning redesignations.

Comment: A commenter states that Trumbull County should be redesignated to attainment whether or not the redesignation of Mahoning County is approved or disapproved. The commenter notes that USEPA had earlier rejected requests to redesignate Trumbull County to attainment for ozone based solely on assumed negative air quality impacts from Youngstown. Since that time, however, Youngstown itself has been shown to be attaining the standard.

Response: USEPA's current ozone redesignation policy, as discussed in more detail in the June 2, 1987, technical support document (TSD), requires an urban ozone nonattainment area, such as in the case of the Youngstown area, to include, at a minimum, the urbanized area as defined by the United States Bureau of Census, the adjacent fringe areas of development, and adjacent areas containing significant precursor sources (sources of VOC and oxides of nitrogen (NO_x)).

Trumbull County contains a portion of the Youngstown urbanized area as currently defined by the United States Bureau of Census. In addition, Trumbull County also contains significant precursor emission sources. Based on these factors, Trumbull County must be included with Mahoning County in the same ozone nonattainment area. Moreover, as described above, the designation for the Youngstown urbanized area must be based on violations of the standard monitored both in Youngstown or violations monitored downwind of Youngstown that are exacerbated by emissions from sources in the Youngstown area.

Comment: A commenter states that the USEPA may not lawfully refuse to redesignate an area in one State based on data obtained in another State. The USEPA can not use data collected in Pennsylvania to disapprove Ohio's redesignation request. USEPA's refusal to approve the redesignation of Mahoning and Trumbull Counties on the basis of data collected in Farrell, Pennsylvania would only be legally defensible if Mahoning and Trumbull Counties, Ohio and Mercer County, Pennsylvania were part of a single ozone nonattainment area. The USEPA, however, can not support this conclusion because: (1) Mercer County is currently designated as attainment for ozone, indicating it is not part of a larger nonattainment area; and (2) the concept of an interstate nonattainment area is inconsistent with the structure and language of the CAA. Under the CAA, each State is charged with the responsibility of achieving the NAAQS within its borders. While pollution may not respect State lines, Congress does; and in enacting section 126 of the CAA, Congress has provided a procedure for addressing the situation which exists in the Youngstown/Mercer County area.

USEPA's power to impose emission control limits more stringent than necessary to attain the NAAQS in a

[3] In addition to the violations of the ozone NAAQS monitored downwind from Mahoning and Trumbull Counties at Farrell, recent violations were also monitored upwind in Portage and Stark Counties. The monitored violation upwind in Portage County implies the possibility of unmonitored violations also occurring downwind within Trumbull County. Similarly, the violation in Stark County implies the possibility of violations downwind in unmonitored portions of Mahoning County. (USEPA recognizes that there currently is a monitor in downtown Youngstown in Mahoning County, which has not monitored a violation. However, due to the suppression of ozone by nitrous oxides in an urban area, e.g., downtown Youngstown, ambient concentrations measured by this monitor will not represent the worst case concentrations in the Mahoning and Trumbull area.)

State where a source is located is dependent on: (1) a petition from another State claiming a trans-boundary pollution impact; and (2) a finding by the Administrator, after public hearing, that the source(s) in the originating State are in fact preventing attainment in the downwind impacted State. Neither of these criteria is met in this case. By retaining the nonattainment designation for Mahoning and Trumbull Counties, the USEPA is illegally seeking to impose on all sources in these counties emission control requirements more stringent than necessary to attain the NAAQS in Ohio.

Response: USEPA's interpretation of Section 126 of the CAA is that it is mainly applicable in cases where modeling or other similar analysis techniques can be used to show that single sources or a relatively small number of stationary sources are the primary cause of NAAQS violations across State lines. Because Ozone is formed as the result of emissions from many sources, stationary and mobile, in an urban source area, and can not generally be shown to result solely or principally from single stationary source emissions, Section 126 may be difficult to apply in the ozone context. Although the State of Pennsylvania could petition the Administrator under Section 126 relative to the Youngstown/Mercer ozone problem, this right does not preclude USEPA from using interstate data in determining whether it is appropriate to redesignate an area.[4]

USEPA's policy calls for the consideration of all relevant ozone and emissions data in redesignation reviews. Because the formation and transport of ozone does not respect State boundaries, it is technically correct and in keeping with USEPA's policy to consider the ozone data without regard to State boundaries.

With regard to the designation of Mercer County, the USEPA is constrained by a decision from the Seventh Circuit Court of Appeals, i.e., *Bethlehem Steel* v. *USEPA*, 638 F.2d 944 (1983), from unilaterally redesignating an area without an initial State request or Congressional directive. The USEPA, however, can use relevant ozone data from all types of areas, whether designated attainment or nonattainment, when reviewing a State's redesignation request. The attainment status of Mercer County does not constrain the USEPA from considering its data when evaluating the attainment status of neighboring Mahoning and Trumbull Counties, which were assumed in the proposed rulemaking to be the logical source area for the observed ozone standard violation in Mercer County. This is based on the prevailing warm weather (ozone conductive) winds in the upper midwest, which typically blow from the quadrant bounded by the directions south and west. The Farrell site is downwind from Mahoning and/or Trumbull Counties on these days.

Section 107(d) of the Act calls for the States to identify and USEPA to subsequently designate those regions, or portions thereof, that do not meet the NAAQS. Thus, it is within USEPA's authority to designate Mahoning and Trumbull Counties as a portion of a larger region including Mercer and Portage Counties that as a whole exceeds the NAAQS. Further, section 171(2) of the Act defines nonattainment areas as any areas shown by monitoring data to exceed the NAAQS, whether or not designated under section 107(d). The fact that Mercer County is not designated nonattainment under section 107(d), therefore, does not preclude USEPA from relying on monitoring data from this county in concluding that Mahoning and Trumbull Counties should maintain their nonattainment status.

Comment: A commenter states that the Farrell, Pennsylvania ozone data should not be considered in this case because the validity of the ozone data for this site could not be independently verified. Because the State of Pennsylvania does not maintain daily monitor zero and span check data after the State has completed the quality assurance of the data, the commenter was unable to independently ascertain the quality of the high ozone concentrations in question. The commenter goes on to state that: (1) the USEPA is not entitled to a presumption of data quality assurance because the USEPA did not itself collect, originate, and quality assure the data; (2) the public is entitled under the (Administrative) Procedure Act to an opportunity to review, and if appropriate, rebut the validity of data central to USEPA's action; and (3) even if the USEPA can assume the data were quality assured because Pennsylvania followed its established procedures, these procedures allow an uncertainty range of 20 percent of the monitor span value, and this data uncertainty range would imply that ozone concentrations monitored to have been above the standard (up to a monitored concentration of 0.150 parts per million) may have actually been below the ozone standard exceedance level of 0.125 parts per million, one-hour averaged. Finally, the commenter notes that although the USEPA assumed the Farrell, Pennsylvania data were quality assured by Pennsylvania, no evidence exists in the rulemaking record to show this was indeed the case.

Response: The fact that Pennsylvania had quality assured the high 1988 ozone concentrations was established in telephone conversations between Regions III and V of the USEPA and in conversations between Region III and the State of Pennsylvania prior to the publication of the proposed rulemaking. Although these conversations were not explicitly documented in the record of USEPA's proposed rulemaking, this does not invalidate the data or preclude their use in rulemaking. It should be noted the peak ozone data have been subjected to the quality assurance reviews of the State of Pennsylvania and USEPA and are now recorded in USEPA's Aerometric Information Retrieval System (AIRS). The quality assured data in AIRS continue to show five ozone standard exceedances in 1988 at the Farrell, Pennsylvania site.

The commenter places significant emphasis on the lack of day-specific zero and span check data. Although these data do provide some useful information on the performance of a monitor, the more indicative and important quality assurance data are those collected during site visits, when multi-point precision checks are conducted, and during site audits, both of which make use of calibrated, certified external ozone calibration sources. The records for site visits and non-USEPA audits are maintained by the States. Records of USEPA audits are maintained by the USEPA. Copies of the USEPA audit reports for the Farrell site have been requested from Region III to supplement the rulemaking record for the final rulemaking. The State of Pennsylvania was requested by the USEPA to certify the quality of the peak 1988 concentrations in writing for the final rulemaking record. That certification has been submitted to the USEPA.

The fact that the USEPA does not itself quality assure the data at all levels of the quality assurance process does not invalidate the data. The State of Pennsylvania, like most other States, collects and quality assures the data using procedures approved by the USEPA. The USEPA delegated to the State the authority to perform this function. It should be noted that the USEPA does conduct periodic audits of monitoring sites and State monitoring

[4] Similarly, see Section 110(a)(2)(E) of the CAA, which requires a SIP to contain adequate measures to insure compliance with the interstate pollution abatement requirements of Section 126.

procedures. Such an audit has been conducted for the Farrell site. A June 15, 1989, telephone conversation between Regions III and V discussing this issue indicated that the Farrell monitor passed this audit examination.

With regard to the claim that the data could be as much as 20 percent in error with no actual ozone standard exceedances having actually occurred, several points can be raised. First, the State monitoring procedures documented along with the commenter's comments show that a 20 percent tolerance is allowed only at low scale deflections of 20 percent of the scale or less. Only a 15 percent tolerance is allowed at scale deflections above this level. In other words, a 20 percent tolerance is only allowed at lower ozone concentrations where a small concentration error is a higher percentage error. Second, in practice, much lower ozone concentration errors are actually experienced. Multi-point precision checks typically show errors to be five percent or less throughout the upper concentration range of monitored concentrations. The third quarter 1988 audit report for the Farrell ozone monitor (this report was included in the commenter's submission) showed an overall multi-point precision error margin of only one percent. Finally, even if the data had a larger error range in practice, it must be remembered that the errors could act to either artificially lower or raise the monitored concentrations. As the commenter states, some concentrations could be overestimated. Other concentrations, however, could be underestimated. This means that some concentrations measured just below the standard could have actually been standard exceedances and other concentrations monitored to have been above the standard could have actually been higher. Although some measurement error is inherent in any set of monitored concentrations, the USEPA does not connect regulatory significance to monitoring error uncertainy provided monitor audits, and precision checks show the errors to be within tolerable margins.

Comment: A commenter states that by 1986 the Youngstown monitor had exhibited 5 years of violation-free data and that the VOC emission reduction achieved in Mahoning and Trumbull Counties by this period was more than sufficient to explain the attainment of the ozone standard. These facts alone should adequately support a redesignation to attainment.

Response: Again, as stated above, USEPA's redesignation policy requires that all relevant data must be considered during the review of a redesignation request. The current data show a violation of the ozone standard in Farrell, Pennsylvania that may be attributed in part to emissions in Mahoning and Trumbull Counties. The USEPA cannot ignore these data. Redesignating Mahoning and Trumbull Counties to attainment could jeopardize future efforts to achieve attainment of the ozone standard in Mercer County, Pennsylvania. Regardless of what VOC emission reductions have already been achieved in Mahoning and Trumbull Counties, additional reductions may be necessary to achieve full attainment and maintenance of the ozone standard in the future. Maintaining the nonattainment status of Mahoning and Trumbull Counties assures the continued implementation of part D of the CAA and, therefore, more certain and extensive emission control requirements and analysis of ongoing nonattainment problems.

With regard to the Youngstown ozone monitoring data, it should be noted that the previous TSDs addressed the fact that the USEPA believes the Youngstown monitor is not adequately placed to find the peak ozone concentrations in the Youngstown area and its downwind environs. The monitor is placed near downtown Youngstown, where higher NO_x emissions from mobile sources are expected to scavenge ozone. Higher ozone concentrations are expected to occur further downwind of the urban core. The USEPA has previously and repeatedly requested the State of Ohio to locate an ozone monitor further downwind of Youngstown. The State has not complied with this request.

Comment: A commenter states that the ozone data collected in Farrell during the summer of 1988 do not provide a rational basis for disapproving the redesignation of Mahoning and Trumbull Counties. The commenter argues that 1988 was an abnormally warm year and, as such, was overly conducive to ozone formation. Despite this fact, the Youngstown data showed no violation of the ozone standard.

Response: As noted above, the lower ozone concentrations monitored at the Youngstown monitor may be questioned on the basis of the poor placement of the monitor in an area with expected lower ozone concentrations. With regard to the warm nature of 1988, USEPA's ozone designation policy does recommend the consideration of 3 years of data to average out some of the effect of exceptional meteorological conditions. The Farrell site, however, monitored five exceedances, and, therefore, even when determined on a 3 year basis, a violation of the standard was monitored.

Further, the CAA does requires that an area must be brought into attainment and maintenance of the standard irrespective of meteorology. Since high ozone concentrations are inherently tied to high temperatures and other ozone conducive meteorological conditions as well as to ozone precursor emissions, some consideration must be given to concentrations monitored during ozone conducive periods as well as to ozone levels during less conducive periods. There is no way of assuring that conditions in 1988 will not be repeated in the near future. It should be noted that 1983 and 1987 were also years in which ozone conducive conditions frequently occurred in the upper Midwest.

Comment: Having argued against USEPA's consideration of the Farrell ozone concentration data, a commenter states that the only remaining basis the USEPA has ever articulated for not approving the redesignation of Mahoning and Trumbull Counties is a claim that Ohio has not fully implemented its current SIP. Three source facilities were found to be out of compliance with existing reasonably available control technology (RACT) regulations during the technical reviews of the redesignation request. The commenter argues this rationalization is inconsistent with the CAA, the ozone NAAQS, and USEPA's redesignation policy. Along this line, the following arguments are made:

(1) Section 171(2) of the CAA defines a nonattainment area as an area which is shown to exceed the NAAQS. Although the USEPA has some discretion to define the method for making the showing of exceedance of the NAAQS, it can not lawfully use that discretion to prescribe a criterion which has no bearing in the attainment issue itself. A showing that an area will attain and maintain the NAAQS is not a function of individual source compliance but rather of the area wide precursor emissions. At the time of the submission of Ohio's redesignation request, the State showed that a 10,000 tons per year growth cushion existed in the area's total VOC emissions level (the area's VOC emissions total was more than 10,000 tons per year less than the attainment level established in the 1979 SIP revisions).

(2) The full compliance requirement is inconsistent with 40 CFR part 50.9 (the definition of the ozone the NAAQS), which states the ozone standard is attained when the expected number of days per calendar year with maximum

hourly concentrations above 0.12 parts per million is equal to or less than one. Nowhere in this standard is there any requirement that all sources be in compliance with regulations.

(3) Requiring that all sources be in compliance with regulations is inconsistent with the April 21, 1983, Sheldon Meyers redesignation policy memorandum, which is the policy memorandum upon which the full compliance requirement is supposedly based. Nowhere in the Meyers' policy memorandum is there a suggestion that evidence of an implemented control strategy is required when the most recent 3 years of data are considered. Such evidence is required as a surrogate for the lack of air quality data when less than 3 years of ozone data are considered. Even when less than 3 years of data are considered, the policy does not state that "every" source in an area must be in compliance in order to demonstrate that a SIP has been implemented. The policy simply requires that where less than 3 years of data are considered, the basic SIP strategy must be shown to be sound and it must be demonstrated that actual, enforceable emission reductions are responsible for the observed air quality improvement.This interpretation of the Meyers' policy memorandum is consistent with the definition of the ozone NAAQS.

(4) Between 1983 and 1986, the USEPA acted on dozens of redesignation requests. In not one of these notices did the USEPA ever disapprove an attainment designation request because one or more sources in an area were out of compliance with applicable SIP limits. In the bulk of these notices, the "implemented SIP" requirement was satisfied simply by a showing that federally approved RACT regulations were in place (fully adopted) and not that *all* sources were in compliance. An example (51 FR 40803) is given showing that an area was approved for redesignation to attainment for ozone where RACT implementation was anticipated and, therefore, not yet fully implemented.

(5) USEPA's claim in the case of Mahoning and Trumbull Counties that the need for full RACT implementation is simply a revised interpretation of the April 21, 1983, policy memorandum is an incorrect, misleading statement. It is actually a wholesale revision of the policy, which occurred after the submittal of Ohio's redesignation request. This veiw is supported by language in USEPA's June 2, 1987, TSD. USEPA's claim in the June 2, 1987, TSD that Regional confusion over the redesignation policy caused some earlier rulemaking to be made without consideration of full RACT implementation fails in the light of the fact that USEPA Headquarters reviewed the earlier rulemaking actions without raising the compliance issue. The policy clearly changed in 1987. Whatever the genesis of this revised policy may have been, it is inappropriate to apply this revised policy retroactively to a redesignation request that had been pending before the USEPA for 2 years before the revised policy was first articulated. as indicated in other rulemaking (January 19, 1989, 54 FR 2214), the USEPA recognizes that such retroactive application of policies developed after the submittal of State requests involves a basic question of fairness. The rulemaking concluded these State submittals should be grandfathered from the effects of subsequent USEPA policy changes.

Response: (1) Sections 171(2) and 107(d) of the CAA provide the basic definition of the term "nonattainment area" and indicate which parts of the CAA (Parts C and D) are invoked when an area is classified as attainment (covered by Part C) or nonattainment (covered by Part D). These sections offer little specific direction in the criteria for designating areas. The USEPA has, therefore, developed policy to fill the guidance gaps left by the CAA.

Since sections 107(d) and 171(2) refer to areas that exceed, or do not meet, the NAAQS, USEPA believes that Congress would not have intended USEPA to redesignate an area absent assurance that the area would continue to meet the standard. Thus, USEPA requires, in addition to monitoring data showing no violations, that a SIP be in place and fully approved for the area, that the SIP generally be implemented, and that permanent documented reductions account for the decrease in emissions resulting in attainment. These additional requirements are necessary to insure that the attainment status will be maintained.

Beyond that, USEPA has in the past referred to a requirement that all sources be in full compliance with all SIP provisions. Commenters took issue with this suggested additional requirement. USEPA need not now address the potential need for full SIP complaince prior to redesignation becuse in this case USEPA is disapproving the redesignation request on the basis of air quality data showing violations of the NAAQS. USEPA, therefore, clarifies that it is disapproving this redesignation solely on air quality grounds, and is taking no further position at this time on the need for full SIP compliance.

With regard to the claim that the SIP Implementation has resulted in a 10,000 ton VOC per year growth cushion, a number of points are appropriate. First, the USEPA has raised the question of the inadequacy of the Youngstown ozone monitor for detecting peak ozone concentrations in the areas downwind of Youngstown. Because higher ozone concentrations than those monitored in downtown Youngstown (the current monitoring area) are expected further downwind of Youngstown and because the 1979 SIP revision was based on the downtown monitoring data, one may question the adequacy of the Youngstown SIP to attain and maintain the ozone NAAQS downwind of Youngstown. Second, given the previously noted implications of the Farrell ozone standard violation (see the comments and responses below), one must also question the adequacy of the Youngstown ozone SIP to attain and maintain the ozone NAAQS in the entire affected area. An emissions growth cushion would not exist in the Youngstown area as claimed by the commenter. To the contrary, additional emission reduction would be required to attain the NAAQS.

(2) The definition of the ozone NAAQS given in 40 CFR Part 50.9 only gives the magnitude of the ozone standard and the monitoring data criteria for determining when the standard is violated. The definition of the NAAQS does not relate to other criteria for the redesignation of an area and, as such, is an imcomplete policy for judging the adequacy of a redesignation request.

(3) This clarification concerning requisite number of years of data did not effect the requirement for evidence of SIP approval and implementation. As to whether evidence of SIP implementaion must include evidence of full compliance by all affected sources USEPA has stated above that it need not address that issue in this time.

(4) Some redesignation requests were approved between 1983 nd 1986 without the adequate consideration of control strategy implementation. This fact was noted in a June 2, 1986, memorandum from G.T. Helms. This memorandum required future redesignation rulemaking to address the requirement for SIP implementation as a condition for redesignation to attainment. USEPA now check rulemaking to make sure this requirement is addressed. Again, USEPA is not addressing here whether the SIP implementation requirement can

be satisified without evidence of full compliance by all sources.

(5) Whether the ozone policy has changed since the April 21, 1983, redesignation policy was released or after the submittal of Ohio's ozone redesignation policy has no bearing on USEPA's application of current redesignation policy to older submittals. Under USEPA's current grandfathering policy (June 27, 1988, memorandum from Gerald A. Emison, subject: "Grandfathering" of Requirements for Pending SIP Revisions" grandfathering is not appropriate if a requested action could permanently foreclose the continued use of the provisions and/or sanctions of Part D of the CAA. The USEPA has, in fact, determined that grandfathering is inappropriate in the case of ozone redesignations to attainment for this reason.

Comment: Two commenters disagreed with USEPA's assumption that Farrell, Pennsylvania is located where one might expect the peak ozone impacts of the emissions from the Youngstown area. Both commenters submitted day-specific meterological data for the exceedance days to show that, on most of the exceedance days, the ozone could be attributed to emissions from areas other than the Youngstown area. Both commenters used hourly surface wind data to determine back-trajectories to origins during the period of 6 am to 9 am. Most of the trajectories do not pass over Youngstown or even over Mahoning and Trumbull Counties. Those trajectories that do pass over Mahoning or Trumbull Counties do not have their origins there. Both commenters argue that the ozone standard exceedance in Farrell would have occurred even without emissions impact form Mahoning and Trumbull Counties. Therefore, they conclude that retaining the nonattainment designation for Mahoning and Trumbull Counties will not provide attainment of the ozone standard at the Farrell site, and the Farrell data should not be the basis for retaining the nonttainment designation for Mahoning and Trumbull Counties.

Response: USEPA's complete response to the technical issues raised by the commentors are contained in USEPA's August 22, 1989, TSD. USEPA's general responses follow:

USEPA agrees with the commenters that surface level trajectories for the Farrell high ozone days do show that emissions in the Cleveland and Pittsburgh areas may have contributed significantly to the Farrell ozone standard exceedances. The submitted data, however, do not provide conclusive proof that emissions from Mahoning and Trumbull Counties did not contribute to ozone standard exceedances at the Farrell site. In fact, USEPA's analysis of the commenters' trajectories show that some originate in Mahoning and Trumbull Counties and that others pass over them prior to impacting the Farrell monitor. Obviously, emissions from sources in Mahoning and Trumbull Counties on these days impact the Farrell monitor.

Additionally, both commenters only addressed surface level transport. Ozone formation and transport occurs over three dimensions at multiple altitude levels with transport between levels as well as horizontally. The commenters did not consider winds/transport aloft. As is often observed, wind aloft can differ significantly in both direction and speed from those at the surface. Until such winds aloft are considered, one cannot rule out impacts of Youngstown emissions on Farrell ozone concentrations.

Plus, both commenters failed to consider wind speed and wind/direction fluctuations with time in the development of the single line trajectories. Such fluctuations, when considered, would result in emissions from sources from a much larger area adversely impacting the monitor than those implied by the single line trajectories. In a back-trajectory analysis, as one marches backward in time, the size of the possible source area widens and deepens. Taking this into consideration, one must elevate the importance of Mahoning and Trumbull Counties' impacts on high ozone concentrations at the Farrell site for 6 of the exceedance days (July 25, 1986, June 25, 1987, and July 5, July 7, July 29, and August 2, 1988). Thus, as discussed above, emissions from these two counties do contribute to the exceedances monitored at Farrell, and it is appropriate to retain these counties' nonattainment designations.

Finally, even if the commenters were correct and emissions in Mahoning and Trumbull Counties had little or no impact on the highest ozone concentrations monitored at the Farrell site (which USEPA disagrees with), USEPA would still have to retain the nonattainment designations for these counties based on probable violations occurring within them. The Farrell monitor, being located relatively close to the Trumbull and Mahoning Counties' borders and being less impacted by local NO_x emissions than the Youngstown monitor, provides the best available monitored ozone data representative of the unmonitored portions of southeastern Trumbull County and northeastern Mahoning County. Considering this factor, it is probable that the ozone standard exceedances monitored at Farrell occurred in portions of Mahoning and Trumbull Counties as well. Based on this reasoning, these counties should retain their nonattainment designations, because USEPA's designation policy requires areas with ozone standard violations to retain their nonattainment designations, regardless of the source of the emissions causing the ozone standard violations.

Comment: A commenter states that the monitored ozone standard exceedances at Farrell were not caused by locally generated emissions but by the weather. It was noted that there was no change in the area's precursor emissions between 1987 and 1988 which could begin to explain the five to ten fold increase in the number of monitored exceedances. Use of the 1986 through 1988 average number of exceedances without adjusting the 1988 data to account for 1988's extreme meteorology would incorrectly penalize the Youngstown area.

Response: The use of 3 years of ozone data for each monitoring site is designed to minimize the impact of year-to-year variations in meteorology. On the other hand, no viable data can be simply rejected on the basis of abnormal meteorology, and the USEPA has not accepted previously proposed temperature based adjustment schemes. No technique has been presented which would give absolute assurances that ozone conducive conditions would not occur again in the near future.

From the data provided by the commenter, it is apparent that 1988 is very similar to 1983 in terms of peak temperatures. In 1984, many people argued that 1983 ozone data should be ignored or adjusted to account for the "abnormally" high temperatures of that year. It was claimed by some people that the high temperatures in 1983 were a once in 50-year occurrence. Nonetheless, such high temperatures and high ozone concentrations occurred again in 1988 with only 4 intervening years of lower peak values. Statistically derived frequencies of a random occurrence do not guarantee it will not be repeated until some minimum time has elapsed between occurrences. Without such a guarantee, the USEPA cannot allow exclusion or adjustment of ozone data to account for "overly conducive" meteorology.

USEPA's Action

USEPA has determined that violations of the ozone NAAQS have been monitored at a site that may have been adversely impacted by emissions from

Mahoning and Trumbull Counties.[5] Therefore, USEPA is disapproving OEPA's request to redesignate Mahoning and Trumball Counties to attainment for ozone, because of the monitored violations.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subject in 40 CFR Part 81

Air Pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: July 3, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90–16016 Filed 7–9–90; 8:45 am]

BILLING CODE 6560–50–M

[5] Violations upwind in Portage and Stark Counties indicate a high probability of unmonitored violations of the NAAQS in Mahoning and Trumball Counties as well.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6880]

List of Communities Eligible for Sale of Flood Insurance; New Hampshire et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717. Federal Center Plaza, 500 C Street, Southwest, room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

(The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance.")

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of Eligible Communities.

REGULAR PROGRAM

State	Community name	County	Community No.	Effective date	
New Hampshire	Amherst, Town of	Hillsborough	330081	May 3, 1990	Suspension withdrawn.
Do	Antrim, Town of	Hillsborough	330082	.....do	Do.
Do	Auburn, Town of	Rockingham	330176	.....do	Do.
Do	Bedford, Town of	Hillsborough	330083	.....do	Do.
Do	Berlin, City of	Coos	330029	.....do	Do.
Do	Brookfield, Town of	Carroll	330179	.....do	Do.
Do	Claremont, City of	Sullivan	330154	.....do	Do.
Do	Cornish, Town of	Sullivan	330155	.....do	Do.
Do	Deering, Town of	Hillsborough	330085	.....do	Do.
Do	Dover, City of	Strafford	330145	.....do	Do.
Do	East Kingston, Town of	Rockingham	330203	.....do	Do.
Do	Exeter, Town of	Rockingham	330130	.....do	Do.
Do	Gorham, Town of	Coos	330032	.....do	Do.
Do	Hampton, Town of	Rockingham	330132	.....do	Do.
Do	Hampton Falls, Town of	Rockingham	330133	.....do	Do.
Do	Hollis, Town of	Hillsborough	330091	.....do	Do.

REGULAR PROGRAM—Continued

State	Community name	County	Community No.	Effective date	
Do	Hooksett, Town of	Merrimack	330115	do	Do.
Do	Jefferson, Town of	Coos	330033	do	Do.
Do	Nashua, City of	Rockingham	330097	do	Do.
Do	Pelhan, Town of	Hillsborough	330100	do	Do.
Do	Plainfield, Town of	Sullivan	330162	do	Do.
Do	Roxbury, Town of	Cheshire	330172	do	Do.
Do	Seabrook Beach, Village of	Rockingham	330854	do	Do.
Do	Walpole, Town of	Cheshire	330027	do	Do.
Maine	Amity, Town of	Aroostook	230418	May 17, 1990	Do.
Do	Boothbay, Town of	Lincoln	230212	do	Do.
Do	Bradford, Town of	Penobscot	230373	do	Do.
Do	Books, Town of	Waldo	230253	do	Do.
Do	Brunswick, Town of	Cumberland	230042	do	Do.
Do	Cornish, Town of	York	230147	do	Do.
Do	Cranberry Isles, Town of	Hancock	230278	do	Do.
Do	Dennysville, Town of	Washington	230312	do	Do.
Do	Eagle Lake, Town of	Aroostook	230016	do	Do.
Do	Frenchboro, Town of	Hancock	230594	do	Do.
Do	Hiram, Town of	Oxford	230094	do	Do.
Do	Industry, Town of	Franklin	230348	do	Do.
Do	Madrid, Town of	Franklin	230350	do	Do.
Do	Mars Hill, Town of	Aroostook	230026	do	Do.
Do	Mercer, Town of	Somerset	230176	do	Do.
Do	Merrill, Town of	Aroostook	230430	do	Do.
Do	Monroe, Town of	Waldo	230260	do	Do.
Do	New Limerick, Town of	Aroostook	230432	do	Do.
Do	Oakfield, Town of	Aroostook	230028	do	Do.
Do	Perry, Town of	Washington	230319	do	Do.
Do	Saco, City of	York	230155	do	Do.
Do	Sedgewick, Town of	Hancock	230291	do	Do.
Do	Smithfield, Town of	Somerset	230370	do	Do.
Do	Smyrna, Town of	Aroostook	230034	do	Do.
Do	Stoneham, Town of	Oxford	230340	do	Do.
Do	Thorndike, Town of	Waldo	230268	do	Do.
Do	Wallagrass, Town of	Aroostook	230449	do	Do.
Do	West Bath, Town of	Sagadahoc	230211	do	Do.
New Hampshire	Merrimack, Town of	Hillsborough	330095	do	Do.

Issued: June 26, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-15977 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-03-M

48 CFR Parts 4409, 4415, 4416, 4419, 4426, 4433, and 4452

RIN 3067-AB40

FEMA Acquisition Regulation; Miscellaneous Amendments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule amends the Federal Emergency Management Agency Acquisition Regulation (FEMAAR). The amendments are intended to update the FEMAAR as a result of changes in the Federal Acquisition Regulation (FAR), and to more fully comply with the requirement to exclude matters from agency regulations which are covered in the FAR. This amendment also implements changes dealing with FEMA internal or administrative matters. A detailed listing of all changes is given below under the section entitled Background.

DATES: *Effective Date:* July 10, 1990. Comments must be received on or before August 9, 1990.

ADDRESSES: Please send comments to Christine Makris, Chief, Policy and Evaluation Division, Office of Acquisition Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, Telephone (202) 646-3743.

FOR FURTHER INFORMATION CONTACT: Christine Makris, Telephone (202) 646-3743.

SUPPLEMENTARY INFORMATION:

Background

Since the initial issuance of the Federal Acquisition Regulation (FAR) numerous Federal Acquisition Circulars (FACs) have been issued. Due to regulatory and statutory changes, as implemented in FAC 84-1 through FAC 84-46, and upon further agency review of the FEMAAR as published in the **Federal Register** on August 1, 1985, the FEMAAR is amended as set forth below. The changes that have been made in the material brought forward from the FEMAAR can be categorized as required by statute and regulation, editorial, or made in the interest of clarity, brevity, and consistency. Other portions of the FEMAAR have been made unnecessary by material written into the FAR and by changes in agency internal procedures.

The parts of the FEMAAR affected by this interim rule are as follows: Table of Content changes; Subpart 4409.4 Debarment, Suspension, and Ineligibility—administrative revisions; Subpart 4415.5 Unsolicited Proposals—clarification made and internal procedures added; 4415.6 Formal Source Selection—internal procedures added; 4416.3 Cost-Sharing contracts—clarification added; Subpart 4419.2 Small Business and Small Disadvantaged Business Concerns—administrative revision; Subpart 4426.1 Handicapped Discrimination regulation—Subpart and clause added; Subpart 4433.1 Protests to the Agency—internal procedures added; Subpart 4452.2—Consideration and Payment (Cost-Sharing) clause (4452.216-70) added; Accessibility of Meetings, Conferences and Seminars to Persons with Disabilities clause (4452.226-01)

added; Data Rights clauses (4452.239–70 and 4452.239–71) removed.

Impact

FEMA has determined based upon an Environmental Assessment, that the interim rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. The interim rule does not have a significant number of small entities and has not undergone regulatory flexibility analysis.

The interim rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

The collection of information in this interim rule has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3501 et seq. Public reporting burden for the information collection in clause 4452.226–01, is estimated to average 3 hours per response. This includes the time for reviewing instructions, searching existing data sources, preparing, reviewing, and submitting the plan. Send comments regarding this burden estimate or any aspect of the information collection, including suggestions for reducing the burden, to Information Collections Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472; and to the Office of Management and Budget, Attention: Desk Officer for the Federal Emergency Management Agency, Washington, DC 20503.

Accordingly, title 48 of the Code of Federal Regulation is amended as set forth below.

List of Subjects in 48 CFR Parts 4409, 4415, 4416, 4419, 4426, 4433, and 4452

Government procurement.

1. The authority citation for parts 4409, 4415, 4416, 4419, and 4452 continues to read as follows:

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

PART 4409—CONTRACTOR QUALIFICATIONS

2. Subpart 4409.4, Debarment, Suspension, and Ineligibility, is amended by removing "Executive Administrator" and adding "Chief of Staff" in the locations listed below:

a. 4409.406–1.
b. 4409.406–3(a).
c. 4409.406–3(b).
d. 4409.406–3(c).
e. 4409.407–1.
f. 4409.407–3(a).

PART 4415—CONTRACTING BY NEGOTIATION

3. Part 4415 is amended as set forth below:

a. The Table of Contents is amended by adding subpart 4415.6 to read as follows:

Subpart 4415.6—Source Selection

Sec.
4415.612 Formal source selection.
4415.612–70 Scope.
4415.612–71 Key participants.

4415.502 [Removed]

b. In subpart 4415.5, remove section 4415.502.

4415.502–70 [Redesignated as 4415.505–1]

c. In subpart 4415.5, section 4415.502–70 is redesignated as 4415.505–1. The section heading of newly redesignated 4415.505–1 is revised to read "4415.505–1 Content of unsolicited proposals".

d. In the first sentence of text in newly redesignated 4415.505–1, add "(Public Law 100–404, Section 407)" after the word "Act"; and after the last sentence of newly redesignated 4415.505–1, add "(See 4416.303)".

e. Section 4415.505–2, is added to read as follows:

4415.505–2 Unsolicited renewal proposals.

Renewal proposals, i.e., those for the extension or augmentation of current contracts, are subject to the same FAR and FEMA regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

f. In 4415.506(a), remove "room 728" and add "room 726".

g. In 4415.506, redesignate paragraph (b) as (c).

h. In 4415.506 add new paragraph (b) to read as follows:

4415.506 Agency procedures.

* * * * *

(b) Unsolicited proposals submitted to FEMA program, regional or field offices, or misdirected proposals, shall be immediately fowarded by recipients to the Headquarters Office of Acquisition Management.

* * * * *

i. In 4415.506–1, designate the existing paragraph as (a) and add the following paragraph as (b):

4415.506–1 Receipt and initial review.

* * * * *

(b) Information Requirements. The Office of Acquisition Management shall keep records of unsolicited proposals received and shall provide prompt status information to requestors. The records shall include, as a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year, the identity of the proposers and the office to which each was referred. These numbers shall be broken out by source (large business, small business, university, or nonprofit institutions).

j. Add subpart 4415.6 after subpart 4415.5 to read as follows:

Subpart 4415.6—Source Selection

4415.612 Formal source selection.

4415.612–70 Scope.

(a) Formal source selection procedures shall apply to competitively negotiated acquisition when the estimated cost exceeds $25,000.

(b) Formal source selection procedures do not apply to the acquisition of Architect-Engineer Services, acquisition from other Government agencies (including State and local), or any other acquisition which is specifically exempted by the Director.

4415.612–71 Key participants.

(a) A proposal evaluation team shall be formed to conduct the technical evaluation of proposals. For acquisitions estimated to cost $10 million or less, the team shall be called the Technical Evaluation Panel (TEP) and shall consist of at least three (3) voting members. For acquisitions in excess of $10 milion, or those whose estimated cost does not exceed $10 million, but the selected source is likely to receive funding for future phase(s) of the same project, and the aggregate amount of such funding (including the current acquisition) is estimated to exceed $10 million, the team shall be called the Source Evaluation Board (SEB) and shall consist of at least five (5) voting members.

(b) The Source Selection Official or the Contracting Officer, depending upon the dollar amount of the proposed award and any anticipated additions to it, shall select a source for contract award. For acquisitions estimated to exceed $10 million, the program head, i.e., Associate Director/Administrator,

of the acquiring office shall be the Source Selection Official. For acquisitions estimated to cost $10 million or less, the Contracting Officer shall be the Source Selection Official.

PART 4416—TYPES OF CONTRACTS

4. Part 4416 is amended as follows:

4416.303 [Amended]

a. In 4416.303(b)(3), remove "See 4415.502–70" and add "See 4415.505–1".

PART 4419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

5. Part 4419 is amended as follows:

4419.20 [Amended]

a. In 4419.201(a), remove "Office of Equal Opportunity" and add "Office of Personnel and Equal Opportunity".

6. Part 4426 is added to read as set forth below:

PART 4426—OTHER SOCIOECONOMIC PROGRAMS

Sec.
4426.101 General policy.
4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

4426.101 General policy.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits Federal agencies from discriminating against qualified persons on the grounds of disability. The law not only applies to internal employment practices but extends to agency interaction with members of the public who participate in FEMA programs. (FEMA's implementation of section 504 of this Act is codified at 44 CFR part 16.)

4426.102 Accessibility of meetings, conferences and seminars to persons with disabilities.

It is FEMA's policy to extend the provisions of the Rehabilitation Act of 1973, as amended, to vendors who interact with the public while under contract to FEMA. Therefore, FEMA Clause 4452.226–01, Accessibility of Meetings, Conferences, and Seminars to Persons with Disabilities, shall be included in FEMA contracts over $25,000 when in the performance of such contract the contractor will plan meetings, seminars and conferences which may be attended by persons with disabilities.

7. Part 4433 is added to read as set forth below:

PART 4433—PROTESTS, DISPUTES AND APPEALS

Authority: 40 U.S.C. 486(c); Reorganization Plan No. 3 of 1978.

Subpart 4433.103—Protests to the Agency

4433.103 Protests to the agency.

(a) Protests should be filed on a timely basis to the Contracting Officer specified in the solicitation or contract. Protests are considered timely if, when based on alleged improprieties in a solicitation which are apparent prior to the bid/proposal closing time, they are filed not later than the closing date, and in other cases they are filed within 10 working days after the basis of the protest is known or should have been known whichever is earlier.

(b) If a protest is received prior to award, the Contracting Officer shall notify all offerors within one full working day after consultation with the Office of General Counsel (OGC). An award will not be made unless a written determination is approved by the Head of the Contracting Activity in accordance with the criteria set forth in FAR 33.103.

(c) If a protest is received after award, the Contracting Officer shall give careful consideration to suspending contract performance if it appears likely that the award may be invalidated and the Government's interest will not be harmed by a delay in the receipt of goods or services. The Contracting Officer's determination to suspend performance should be made in writing and approved by the Head of the Contracting Activity after consultation with OGC. If the decision is to proceed with contract award or continue with contract performance, the Contracting Officer shall include the written findings in the file and shall give written notice of the decision to the protestor and other interested parties.

(d) The Contracting Officer/Contract Specialist shall prepare the final decision for approval by the Head of the Contracting Activity. The protestor shall be notified of the final decision regarding its protest within 30 working days after receipt of the protest.

PART 4452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Part 4452 is amended as follows:

a. Section 4452.216–70 is added to read as follows:

4452.216–70 Consideration and payment (Cost-Sharing).

As prescribed in 4416.303, include the following clause in research and development contracts with non-Federal organizations:

CONSIDERATION AND PAYMENT (COST-SHARING) (MAR 1989)

(a) The estimated cost for the performance of this contract is $_____. The contractor agrees to bear without reimbursement by the Government ____% of the cost for performance hereunder. Such cost sharing shall be effected as set forth in paragraph (b) below.

(b) Public vouchers or invoice shall be submitted in an original and five (5) copies and shall show the total cost incurred for the period for which the voucher or invoice is submitted, the cumulative total of costs incurred through the billing period, and the percentage of costs to be reimbursed by the Government. However, the Government is not obligated to reimburse the contractor for the Government's share of the costs in excess of _____% of such amount. The Government shall not be obligated to reimburse the contractor for the Government's share of the costs in excess of $_____ nor is the contractor obligated by this contract to expend his own funds in excess of $_____.

(End of Clause)

b. Section 4452.226–1 is added to read as follows:

4452.226–1 Accessibility of meetings, conferences and seminars to persons with disabilities.

Include the following clause in contracts under which the contractor will plan meetings, conferences and seminars which may be attended by persons with disabilities.

Accessibility of Meetings, Conferences, and Seminars to Persons With Disabilities (January 1989)

The Contractor agrees as follows:

(a) *Planning.* The Contractor will develop a plan to assure that any meeting, conference, or seminar held pursuant to this contract will meet or exceed the minimum accessibility standards set forth below. This plan shall include a provision for ascertaining the number and types of disabled individuals planning to attend the meeting, conference, or seminar. The plan shall be submitted to the Contracting Officer for approval prior to initiating action. A consolidated or master plan for contracts requiring numerous meetings, conferences, or seminars may be submitted in lieu of separate plans.

(b) *Facilities.* Any facility to be utilized for meetings, conferences, or seminars in performance of this contract shall be accessible to persons with disabilities. The

Contractor shall determine, by an on-site inspection if necessary, that the following minimum accessibility requirements are met, or suitable modifications are made to meet these requirements, before the meeting:

(1) *Parking.* (i) Where parking is available on or adjacent to the site one 12' wide space must be set aside for the car of each mobility impaired attendee. The space need not be permanently striped but may be temporarily marked by signs, ropes, or other means satisfactory to carry out this provision.

(ii) Where parking is not available on or adjacent to the site, valet parking or other alternative means must be available to assist disabled attendees. Alternate means must be satisfactory in the judgment of the Contracting Officer.

(2) *Entrances.* (i) "Entrances" shall include at least one accessible entrance from the street/sidewalk level, and at least one accessible entrance from any available parking facility.

(ii) The entrance shall be level or accessible by ramp with an incline that allows independent negotiation by a person in a wheelchair. In general, the slope of the incline shall be no more than 1" rise per foot of ramp length (1:12).

(iii) Entrance doorways shall be at least 30" in clear width and capable of operation by persons with disabilities. Revolving doors, regardless of foldback capability, will not meet this requirement.

(3) *Meeting Rooms.* (i) Meeting room access from the main entrance area must be level or at an independently negotiable incline (approximately 1:12) and/or served by elevators from the main entrance level. All elevators shall be capable of accommodating a wheelchair 29" wide by 45" long.

(ii) Meeting rooms shall be on one level or, if on different levels, capable of being reached by elevators or by ramps that can be independently negotiated by a person in a wheelchair. Doorways to all meeting rooms shall be at least 30" in clear width.

(iii) The interior of the meeting room shall be on one level or ramped so as to be independently negotiable for a person in a wheelchair.

(iv) Stages, speaker platforms, etc. which are to be used by persons in wheelchairs must be accessible by ramps or lifts. When used, the ramps may not necessarily be independently negotiable if space does not permit. However, any slope over 1:12 must be approved by the Contracting Officer. Each case is to be judged on its own merits.

(v) If a meeting room with fixed seating is utilized, seating arrangements for persons in wheelchairs shall be made so that these persons are incorporated into the group rather than isolated on the perimeter of the group.

(4) *Restrooms.* (i) Restrooms shall have level access, signs indicating accessibility, and doorways at least 30" in clear width.

(ii) Sufficient turning space within restrooms shall be provided for independent use by a person in a wheelchair 29" wide by 45" long. A space 60" by 60" or 63" by 56" of unobstructed floor space as measured 12" above the floor is acceptable by standard; other layout will be accepted if it can be demonstrated that they are usable as indicated.

(iii) There will be a restroom for each sex or a unisex restroom with at least one toilet stall capable of accommodating a wheelchair 29" wide by 45" long (by standard, the minimum is 3'–0" by 43'–83"), with outswinging door or private curtains. Wall mounted grab bars are required.

(iv) When separate restrooms have been set up for mobility impaired persons, they shall be located adjacent to the regular restrooms and shall be fully accessible.

(5) *Eating Facilities.* (i) Eating facilities in the meeting facility must be accessible under the same general guidelines as are applied to meeting rooms.

(ii) If the eating facility is a cafeteria, the food service area (cafeteria line) must allow sufficient room for independent wheelchair movement and accessibility to food for persons in wheelchairs, and cafeteria staff shall be available to assist disabled persons.

(6) *Overnight Facilities.* If overnight accommodations are required:

(i) Sufficient accessible guest rooms to accommodate each attendee who is disabled shall be located in the facility where the meeting, conference, or seminar is held, or in a facility housing the attendees which is conveniently located hereby, whichever is satisfactory to the Contracting Officer.

(ii) Overnight facilities shall provide for the same minimum accessibility requirements as the facility utilized for guest room access from the main entrance area shall be level, ramped at an independently negotiable incline (1:12), and/or served by elevators capable of accommodating a wheelchair 29" wide by 45" long.

(iii) Doorways to guest rooms, including the doorway to the bathroom, shall be at least 30" in clear width.

(iv) Bathrooms shall have wall mounted grab bars at the tub and water closet.

(v) Guest rooms for persons with a disability shall be provided at the same rate as a guest room for other attendees.

(7) *Water Fountains.* Water fountains shall be accessible to disabled persons, or have cup dispensers for use by persons in wheelchairs.

(c) Provisions of Services for Sensory Impaired Attendees.

(1) The Contractor, in planning the meeting, conference, or seminar shall include in all announcements and other materials pertaining to the meeting, conference, or seminar a notice indicating that services will be made available to sensory impaired persons attending the meeting, if requested within five (5) days of the date of the meeting, conference, or seminar. The announcement(s) and other material(s) shall indicate that sensory impaired persons may contact a specific person(s), at a specific address and phone number(s), to make their service requirements known. The phone number(s) shall include a teletype number for the hearing impaired.

(2) The Contractor shall provide, at no cost to the individual, those services required by persons with sensory impairments to insure their complete participation in the meeting, conference, or seminar.

(3) As a minimum, when requested in advance, the Contractor shall provide the following services:

(i) For hearing impaired persons, qualified interpreters. Provisions will also be made for volume controlled phone lines and, if necessary, transportation to local teletype equipment to enable hearing impaired individuals to receive and send meeting related calls. If local teletype equipment is not available, the Contractor shall provide on-site teletype equipment. Also, the meeting rooms will be adequately illuminated so signing by interpreters can be easily seen.

(ii) For vision impaired persons, readers and/or cassette materials, as necessary, to enable full participation. Also, meeting rooms will be adequately illuminated.

(iii) Agenda and other conference material(s) shall be translated into a usable form for the visually and hearing impaired. Readers, braille translations, and/or tape recordings are all acceptable. These materials shall be available to sensory impaired individuals upon their arrival.

(4) The Contractor is responsible for making every effort to ascertain the number of sensory impaired individuals who plan to attend the meeting, conference, or seminar. However, if it can be determined that there will be no sensory impaired person (deaf and/or blind) in attendance, the provision of those services under paragraph (c) for the non-represented group, or groups, is not required.

(Approved by the Office of Management and Budget under control number 3067–0213)

(End of Clause)

4452.239–70 and 4452.239–71 [Removed]

c. In subpart 4452.2, remove sections 4452.239–70, Rights in Technical Data and Computer Software, and 4452.239–71, Rights in Technical Data—Specific Acquisition.

Kenneth J. Brzonkala,

Director, Office of Acquisition Management.

[FR Doc. 90–15976 Filed 7–9–90; 8:45 am]

BILLING CODE 6718–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Purple Cat's Paw Pearlymussel Determined To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the purple cat's paw pearlymussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*)), to be an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel

historically occurred in the Ohio River and its large tributaries in Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently the purple cat's paw pearlymussel in known from only two relict, apparently nonreproducing populations—one in a reach of the Cumberland River in Tennessee and one in a reach of the Green River in Kentucky. The distribution and reproductive capacity of this species have been seriously impacted by the construction of impoundments on the large rivers it once inhabited. Unless reproducing populations are found or methods developed to maintain existing populations, this species will likely become extinct in the foreseeable future.

EFFECTIVE DATE: August 9, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

The purple cat's paw pearlymussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*)) was described by Rafinesque (1820). The white cat's paw (*Epioblasma* (=*Dysnomia*) *sulcata delicata*), the northern subspecies of the cat's paw pearlymussel known from the Lake Erie system of the St. Lawrence drainage, was listed as endangered on June 14, 1976 (41 FR 24064). The purple cat's paw, which is characterized as a large river species (Bates and Dennis 1985), has a medium-size shell that is subquadrate in outline (Bogan and Parmalee 1983). The shell has fine, faint, wavy green rays with a smooth and shiny surface. The inside of the shell is purplish to deep purple (the inside shell of the white cat's paw is white). Like other freshwater mussels, the purple cat's paw feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae parasitize fish. The mussel's life span, fish species its larvae parasitize, and other aspects of its life history are unknown.

The purple cat's paw pearlymussel was historically distributed in the Ohio, Cumberland, and Tennessee River systems in Ohio, Illinois, Indiana, Kentucky, Tennessee and Alabama (Bogan and Parmalee 1983, Isom, *et al.* 1979, Kentucky State Nature Preserves Commission 1980, Parmalee *et al.* 1980, Stansbery 1970, Watters 1986). Based on personal communications with knowledgeable experts (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, 1987; Mark Gordon and Robert Anderson, Tennessee Technological University, 1988; Arthur Bogan, Philadelphia Academy of Sciences, 1988; Ronald Cicerello, Kentucky State Nature Preserves Commission, 1988; David Stansbery, Ohio State University, 1987) and a review of current literature, the species is known to survive in only two river reaches, but apparently as nonreproducing populations. These are located in the Cumberland River, Smith County, Tennessee, and the Green River, Warren and Butler Counties, Kentucky.

The continued existence of these two populations is questionable. Unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will become extinct in the foreseeable future. Any individuals that do still survive in these two river reaches are also threatened from other factors. The Green River in Kentucky has experienced water quality problems related to the impacts from oil and gas production in the watershed. The individuals still surviving in the Cumberland River are potentially threatened by gravel dredging, channel maintenance, and commercial mussel fishing. Although the species is not commercially valuable, incidental take of the species does sometimes occur in the Cumberland River during commercial mussel fishing for other species.

The purple cat's paw pearlymussel was recognized by the Service as a category 2 species (one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife) in a May 22, 1984, notice published in the **Federal Register** (49 FR 21664). On May 2, 1988, and September 8, 1988, the Service notified Federal, State, and local governmental agencies and interested individuals by mail that a status review was being conducted specifically on the purple cat's paw pearlymussel and that the species could be proposed for listing.

On July 27, 1989, the Service published in the **Federal Register** (54 FR 31209) a proposal to list the purple cat's paw pearlymussel as an endangered species. That proposal provided information on the species' biology, status, and threats to its continued existence.

Summary of Comments and Recommendations

In the July 27, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of the final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted and requested to comment. A legal notice was published in the following newspapers: The *Daily News*, Bowling Green, Kentucky, August 13, 1989; and the *Lebanon Democrat*, Tennessee, August 10, 1989.

A total of ten comments were received from nine entities. Six respondents (National Park Service, Mammoth Cave National Park; U.S. Soil Conservation Service, Tennessee Office; the Department of the Army, Corps of Engineers, Louisville District; Kentucky Department of Fish and Wildlife; Kentucky State Nature Preserve Commission; and Tennessee Department of Conservation) supported the proposal to list the purple cat's paw pearlymussel as an endangered species. The Department of the Army, Corps of Engineers, Nashville District, noted that listing the species would not significantly impact their district program or jurisdiction. The Indiana Department of Natural Resources stated that they were unaware of any historical records for the species in their State.

The Kentucky Farm Bureau Federation (KFBF) requested (September 7, 1989) that a public hearing be held primarily to discuss potential restrictions to agriculture that might result from listing the species. A Service biologist contacted KFBF, and an informal meeting was arranged and held in Bowling Green, Kentucky, on September 20, 1989, with KFBF representatives, local governmental officials, and farmers to discuss their concerns. Based on the results of that meeting, the KFBF withdrew on September 21, 1989, their request for a public hearing. In the withdrawal letter, the KFBF expressed the following concerns.

1. The KFBF stated that species should be listed only if a clear determination is made that they are actually endangered or threatened.

Response: The Service is convinced, based on personal communications with mussel experts and a review of relevant literature (see "Background" section of this rule), that the purple cat's paw pearlymussel is clearly close to extinction and thus qualifies for protection under the Act.

2. The KFBF felt that adequate follow-up monitoring of listed species should be conducted to ensure that a species' status information is current.

Response: The Service has historically had only limited resources to monitor

listed species through field assessments. However, the Service regularly updates its data base on listed species through frequent contact with species experts. Additionally, the Service, as the Act specifically requires, conducts a status review of each listed species every 5 years after it is listed.

3. The KFBF requested a list of agricultural chemicals that might be prohibited as a result of the U.S. Environmental Protection Agency's (EPA) proposed pesticide labeling program.

Response: Although the Service is unable to predict which agricultural chemicals may be prohibited by EPA, the results of a recent consultation between the Service and EPA involving pesticides would indicate that the number of prohibited pesticides should be minimal. The Service on July 14, 1989, issued to EPA a biological opinion (KFBF was provided with a copy at the September 20, 1989, meeting) addressing the potential impact of 108 pesticides to federally listed species. In that opinion, the Service concluded that some chemicals should be somewhat restricted to avoid the likelihood of jeopardizing the continued existence of some federally listed species, but the Service also concluded that none of these 108 pesticides should be prohibited from use. The most stringent restriction to avoid jeopardy to federally listed mussels was to ban the use of certain pesticides within 40 yards of the water's edge for ground application and 200 yards for aerial application within ¼ mile of sites known to be inhabited by the mussel.

4. The KFBF requested information on the nature and extent of impact that listing will have on agriculture.

Response: Except for potential impacts from restrictions on agricultural pesticide use, the Service is unaware of any other direct impacts to agriculture that may occur as a result of listing the purple cat's paw pearlymussel.

5. The KFBF requested clarification of the process that would be used for public involvement before land acquisitions, enlargement of buffer zones, or additional chemical restrictions could be imposed.

Response: The Service has reviewed EPA's proposed Endangered Species Protection Program regarding the registration of pesticides, which was published in the **Federal Register** (54 FR 27984) on July 3, 1989, and has conferred with EPA personnel on this matter. The Service is unaware of any land acquisition plans by EPA as part of their Endangered Species Protection Program. Additionally, it is not anticipated that the Service will enter into a land acquisition program as part of its recovery efforts for this species. Changes to buffer zones or additional chemical restrictions would result from conclusions contained in a Service biological opinion; and before EPA would implement such changes, the conclusions in the biological opinion would be made available for public review and comment. Additionally, according to personal communications with EPA biologists (William Gill and Lyla Koroma 1989), EPA encourages public comment at any time on all phases of their Endangered Species Protection Program.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the purple cat's paw pearlymussel should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the purple cat's paw pearlymussel (*Epioblasma* (=*Dysnomia*) *obliquata obliquata* (=*E. sulcata sulcata*)) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The purple cat's paw pearlymussel was once known from the large tributaries of the Ohio River system in Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama (Bogan and Parmalee 1983). However, all but two of the historically known populations were apparently lost due to conversion of many sections of the bigger rivers to a series of large impoundments. This seriously reduced the availability of preferred riverine gravel/sand habitat and likely affected the distribution and availability of the mussel's fish host. As a result, the species' distribution has been substantially reduced.

The State of Indiana has no current records of the species in the State (Indiana Department of Natural Resources, personal communication, 1988). The species has not been collected in Illinois in over 100 years (Illinois Natural History Survey Division, personal communication, 1988). In Kentucky the species is now known only from the Green River, Warren and Butler Counties, Kentucky (Kentucky Department of Fish and Wildlife Resources and Kentucky State Nature Preserves Commission, personal communications, 1988). This Green River population is represented by only one old but freshly dead individual taken on the Green River in Warren and Butler Counties, Kentucky, in 1988 (Robert Anderson, Tennessee Technological University, personal communication, 1988). Prior to 1988, the mussel had not been collected in the Green River since 1971 (Kentucky State Nature Preserves Commission, personal communication, 1988). The middle Cumberland River (Smith County, Tennessee) contains the only known living representative of the purple cat's paw in Tennessee (U.S. Army Corps of Engineers, personal communication, 1988). The historic collection site in Alabama (on the Tennessee River at Muscle Shoals) is now impounded (Bogan and Parmalee 1983).

The two surviving populations are threatened from impacts on their environment. The Green River population is threatened from degradation of water quality resulting from inadequate environmental controls at oil and gas exploration and production facilities and from altered stream flows from upstream reservoirs. The Cumberland River population is potentially threatened by river channel maintenance, navigation projects, and gravel and sand dredging.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist on harvested mussel beds, and the species is therefore sometimes taken by mussel fishermen. Thus, take does pose some threat to the species. Federal protection would help to control the take of individuals.

C. *Disease or predation.* Although the purple cat's paw pearlymussel is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky and Tennessee prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, these States do not protect the species

from take for other purposes. Federal listing will provide the species additional protection under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Neither of the presently known populations is known to be reproducing. Therefore, unless reproducing populations can be found or methods can be developed to maintain existing populations or create new ones, the species will be lost in the foreseeable future. In fact, both known populations may contain only old individuals that have passed their reproductive age.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the purple cat's paw pearlymussel (*Epioblasma (=Dysnomia) obliquata obliquata (=E. sulcata sulcata)*) as an endangered species. Historical records reveal that the species was once much more widely distributed in many of the large rivers of the Ohio River system. Presently only two isolated, apparently nonreproducing populations are known to survive. Due to the species' history of population losses and the vulnerability of the two remaining populations, classification as endangered appears apropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the purple cat's paw pearlymussel).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the purple cat's paw pearlymussel at this time, owing to the lack of benefits from such designation. The U.S. Army Corps of Engineers, the Tennessee Valley Authority, and the U.S. Park Service are the three Federal agencies most involved, and they, along with the State natural resources agencies in Tennessee and Kentucky, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. All the Federal agencies mentioned have conducted studies in these river basins and are knowledgeable of the fauna and of their projects' impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes and private collection could be a threat. Publicity accompanying critical habitat designation could increase that threat by drawing attention to their specific habitat. The location of populations of this species has consequently been described only in general terms in this final rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies through the Service office described in the **"ADDRESSES"** section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service has notified Federal agencies that may have programs that affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facilities development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species has been protected and the project objectives have been met. In fact, the areas inhabited by the purple cat's paw pearlymussel are also inhabited by other mussels that have been federally listed since 1976. The Service has a history of successful resolution of section 7 conflicts that have protected the species and allowed for project objectives to be met throughout these areas.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Watters, G.T. 1986. The Nature Conservancy Element Stewardship Abstract: *Epioblasma obliquata obliquata.* The Nature Conservancy, Midwest Regional Office, Minneapolis, Minnesota. Unpublished report. 4 pp.

Author

The primary author of this proposed rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species			Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name	Historic range					
CLAMS							
*	*	* *	*		*		
Pearly mussel, purple cat's paw.	*Epioblasma (=Dysnomia) obliquata obliquata (=E. sulcata sulcata).*	U.S.A. (AL, IL, IN, KY, TN).....	NA	E	394	NA	NA
*	*	* *	*		*		

Dated: June 8, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–15939 Filed 7–9–90; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 55, No. 132
Tuesday, July 10, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV-90-179]

Idaho-Eastern Oregon Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 945 for the 1990–91 fiscal period. Authorization of this budget would permit the Idaho-Eastern Oregon Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by July 20, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of potatoes grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and 3,793 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of potato producers and handlers may be classified as small entities.

The budget of expenses for the 1990–91 fiscal period was prepared by the Idaho-Eastern Oregon Potato Committee (committee), the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Idaho-Eastern Oregon potatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon before the season starts, and expenses are incurred on a continuous basis.

The committee met on June 13, 1990, and unanimously recommended a 1990–91 budget of $98,400—$20,220 more than the previous year. Increases were made in the manager's and steno's salaries, stationery and supplies, meetings and miscellaneous, Federal payroll taxes, insurance and bonds, contingency, reserve for auto purchase, gasoline, and maintenance/repair portions of the budget. The committee also unanimously recommended an assessment rate of $0.0026 per hundredweight of potatoes, the same as last year. This rate, when applied to anticipated fresh market shipments of 24 million hundredweight, would yield $62,400 in assessment income. This, along with $3,600 in fees, $2,400 in interest, and $30,000 from the committee's authorized reserve, would be adequate for budgeted expenses. The projected reserve at the end of the 1990–91 fiscal period is $44,000, which would be carried over into the next fiscal period. This amount is within the maximum permitted by the order of one fiscal year period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1990–91 fiscal period for the program begins on August 1, 1990, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at

a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 945

Marketing agreements, potatoes, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 945 be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 945.243 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 945.243 Expenses and assessment rate.

Expenses of $98,400 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of potatoes is established for the fiscal period ending July 31, 1991. Unexpended funds may be carried over as a reserve.

Dated: July 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–15896 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 987

[Docket No. FV–89–175]

Proposed Expenses and Assessment Rate for Marketing Order Covering Domestic Dates Produced or Packed in Riverside County, CA

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order 987 for the 1990–91 crop year established for that order. The proposal is needed for the California Date Administrative Committee (committee) to incur operating expenses during the 1990–91 crop year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by August 9, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 (7 CFR part 987) regulating the handling of dates produced or packed in Riverside County, California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California dates regulated under the date marketing order each season, and approximately 135 date producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The California date marketing order, administered by the Department, requires that the assessment rate for a particular crop year apply to all assessable dates handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are date handlers and producers. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of dates (in hundredweight). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on June 6, 1990, and recommended 1990–91 crop year expenditures of $479,400 and an assessment rate of $1.40 per hundredweight of assessable dates shipped under M.O. 987. In comparison, 1989–90 crop year budgeted expenditures were $361,480 and the assessment rate was $1.30 per hundredweight.

Included in 1990–91 budgeted expenditures is a $100,000 contingency fund to cover the anticipated hiring of an Executive Director to handle promotion activities. This contingency fund would cover the Executive Director's salary, travel and benefits. The major expenditure item this year is $429,000 for continuation of the committee's market promotion program. The industry is faced with an oversupply of product dates and the committee considers this program necessary to stimulate sales. Last year the committee budgeted $5,400 for liability insurance which is not included in this year's budget. The remaining expenditures are for program administration and are budgeted at about last year's amount.

Income for the 1990–91 season is expected to total $495,500. Such income consists of $490,000 in assessments based on shipments of 35,000,000 assessable pounds of dates at $1.40 per

hundredweight and $5,500 in interest income.

The committee also recommended that any unexpended funds or excess assessments from 1989–90 crop year be placed in its reserve. The committee's reserve is well within the maximum amount authorized under the order.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CA

For the reasons set forth in the preamble, it is proposed that 7 CFR part 987 be amended as follows:

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 987.335, is added to read as follows;

§ 987.335 Expenses and assessment rate.

Expenses of $479,400 by the California Date Administrative Committee are authorized, and an assessment rate of $1.40 per hundredweight of assessable dates is established for the crop year ending Sepember 30, 1991. Unexpended funds from the 1989–90 crop year may be carried over as a reserve.

Dated: July 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–15895 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0700]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend the portion of Regulation Y, 12 CFR part 225, implementing the Change in Bank Control Act (the "CIBC Act") to remove the current regulatory requirement that a person that has already received regulatory clearance to acquire 10 percent or more of the shares of a state member bank or bank holding company must file additional notices under the CIBC Act for subsequent acquisitions resulting in ownership of between 10 and 25 percent of the shares of the bank or bank holding company. The Board has proposed this amendment to Regulation Y because, in the Board's experience, the requirement for additional filings by a person that has alredy been subject to regulatory review and seeks to control less than 25 percent of the shares of the bank or bank holding company imposes significant burdens on the acquiring person without identifying significant financial, managerial, competitive, or other problems. This proposed amendment is intended to reduce the regulatory burden under the CIBC Act without impairing the Board's ability to properly evaluate acquisitions under the statutory factors set forth under the CIBC Act.

DATES: Comments must be received by August 8, 1990.

ADDRESSES: All comments, which should refer to Docket No. R–0700, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to room B–2223, 20th & Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Assistant General Counsel (202/452–3583), Mark J. Tenhundfeld, Attorney (202/452–3612), or Elizabeth Thede, Attorney, Legal Division (202/452–3274); Sidney M. Sussan, Assistant Director (202/452–2638), or Beverly L. Evans, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202/452–2573). For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: Under the CIBC Act, 12 U.S.C. 1817(j), persons acting either individually or in concert to acquire control of any insured state member bank or bank holding company must provide the Board with 60 days prior written notice describing the proposed acquisition. The transaction may proceed at the end of the 60-day period unless the Board disapproves the transaction or extends the notice period. Alternatively, an acquisition may proceed prior to the expiration of the 60-day review period if the Board issues a written statement of its intent not to disapprove the transaction.

Regulation Y identifies certain transactions that are presumed to constitute the acquisition of control. In particular, § 225.41(b)(2) of Regulation Y establishes a regulatory presumption requiring the filing of a notice of change in bank control if, after an acquisition, any person or group of persons acting in concert will control 10 percent or more of a class of voting securities of a bank or bank holding company and if either: (i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (5 U.S.C. 781), or (ii) no other person will own a greater percentage of that class of voting securities immediately after the transaction. 12 CFR 225.41(b)(2). Under this regulation, a person must make additional CIBC Act filings for each acquisition of additional shares of the bank or bank holding company until the person acquires in excess of 25 percent of the shares of the bank or bank holding company. A shareholder who continuously controls 25 percent or more of a class of voting securities and who has received regulatory approval for that acquisition is generally not required to file further notices under the CIBC Act to acquire additional shares of that class of voting shares. 12 CFR 225.42(a).

Many of the notices currently filed with the Board under the CIBC Act involve situations where a shareholder who has already been subject to the regulatory review process under the CIBC Act seeks to acquire a small number of additional shares with a minimal expenditure of funds. In other instances, a controlling shareholder may be required by the Board's current regulations to file a notice in connection with a redemption by a bank or bank holding company of shares of another shareholder, even though the percentage ownership of the controlling shareholder increases only minimally and the controlling shareholder expends no funds and acquires no additional shares. In the Board's experience, the requirement for additional filings by a person that has already been subject to regulatory review and seeks to control less than 25 percent of the shares of the bank or bank holding company imposes significant burdens on the acquiring person without identifying significant

financial, managerial, competitive, or other problems.

The proposed amendment would allow a person that has received Board clearance under the CIBC Act to acquire 10 percent or more of a class of voting securities of a state member bank or bank holding company to make additional acquisitions of voting securities of that same institution without filing further notices under the CIBC Act unless the acquisitions would cause the person's ownership interest to exceed 25 percent of the class of voting securities. Should the financial and managerial resources or other circumstances indicate that monitoring of additional acquisitions in a specific case is appropriate, the Board and Reserve Banks would retain the authority to notify a bank, bank holding company, or acquiring shareholder prior to an acquisition that a notice under the CIBC Act would be required.

The Board believes that the proposed amendment to Regulation Y would significantly reduce the regulatory burden under the CIBC Act without impairing the Board's ability to properly evaluate acquisitions under the statutory factors set forth under the CIBC Act. The Board seeks public comment regarding whether this proposal is appropriate in light of the Board's responsibilities under the CIBC Act.

Regulatory Flexibility Act Analysis

This proposal to amend the Board's Regulation Y will decrease the burden on small companies by narrowing the circumstances under which shareholders of small banks and bank holding companies must file notices under the CIBC Act. No additional regulatory burden would be placed on such companies. Moreover, the proposal would not impose any additional regulatory burden on banks or bank holding companies of any size that are targets of a proposed change in control. Thus, the proposal is not expected to have any adverse economic impact on small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act Analysis

This proposed regulation reduces the number of instances in which notices must be filed with the Federal Reserve System under the CIBC Act. Accordingly, the regulation will lessen the paperwork burden for individuals, small businesses, and other "persons," as defined in the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, Banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set out in this notice, and pursuant to the Board's authority under section 13 of the Change in Bank Control Act (12 U.S.C. 1817(j)(13)), the Board proposes to amend 12 CFR part 225 as follows:

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1821i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In § 225.42, the heading to paragraph (a) is revised, paragraph (a) is redesignated as paragraph (a)(1), and new paragraph (a)(2) is added to read as follows:

§ 225.42 Transactions not requiring prior notice.

* * * * *

(a)(1) *Increase of previously authorized acquisitions above 25 percent.* * * *

(2) *Increase of previously authorized acquisitions between 10 percent and 25 percent.*

The acquisition of additional shares of a class of voting securities of a state member bank or bank holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of 10 percent or more of that class of voting securities after filing the notice required under § 225.41(b)(2) of this subpart if the aggregate amount of voting securities held is less than 25 percent of any class of voting securities of the institution.

* * * * *

Board of Governors of the Federal Reserve System, July 2, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–15776 Filed 7–9–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–95–AD]

Airworthiness Directives; Boeing Model 737–200, 737–300, and 737–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which would require a visual inspection for H–11 bolts and replacement, if necessary, with A286 stainless steel bolts. This proposal is prompted by reports of H–11 steel bolts used instead of A286 stainless steel bolts to attach the outboard flap forward support fitting to the wing structure. This condition, if not corrected, could lead to fracture of the fastener in the fitting attachment, which could result in a loss of of the outboard flaps.

DATES: Comments must be received no later than August 29, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–95–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submited will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-95-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: During inspections of Boeing Model 737-300 series airplanes, some H-11 steel bolts were found installed as fasteners in the forward attach fitting of the outboard flap inboard track. H-11 steel bolts were used on early Model 737 series airplanes, but were replaced by A286 stainless steel bolts after failure of H-11 bolts occurred in service due to stress corrosion. Failures of the H-11 bolts had previously occurred at the forward support fitting on Model 737-200 series airplanes. Engineering review has revealed that H-11 bolts may have been installed as substitutes on later Model 737 series airplanes. Fastener fracture in the fitting attachment could result in a loss of the outboard flap, causing serious control difficulties under certain circumstances.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990 (for Model 737-200 series airplanes), and Boeing Alert Service Bulletin 737-57A1208, dated March 29, 1990 (for Model 737-300 and 737-400 series airplanes), which describe procedures for inspection and replacement of H-11 bolts with A286 stainless steel bolts at the outboard flap fitting attachment. The service bulletins also describe procedures for external torque inspections of certain bolts, if necessary.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require visual inspection for, and replacement, if necessary, of H-11 bolts installed in the outboard flap fitting attachment, and, under certain circumstances, a repetitive torque inspection, in accordance with the service bulletins previously described.

There are approximately 1,438 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 623 airplanes of U.S. registry would be affected by this AD, that it would take approximately 51 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,270,920.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 737-200 series airplanes, listed in Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990; and Model 737-300 and 737-400 series airplanes, listed in Boeing Alert Service Bulletin 737-57A1208, dated March 29, 1990; certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fastener fracture in the fitting attachment which could result in a loss of the outboard flap, accomplish the following:

A. Prior to the accumulation of 5,000 flight hours or within 12 months after the effective date of this AD, whichever occur later, perform a visual inspection of the outboard flap support fitting attach bolts in accordance with Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990, or Boeing Alert Service Bulletin 737-57A1208, dated March 29, 1990, as applicable.

1. If the bolts are confirmed as BACB30LE6 or BACB30US6, no further action is required at that location.

Note: A bolt head marking of BACB30LE6, BACB30US6, B30LE6, or B30US6 confirms the correct bolt installation. Oversize bolts BACB30LE7 or BACB30US7 may be installed and are acceptable.

2. If a bolt BACB30MT is found, prior to further flight, and at intervals not to exceed 1,000 flight hours, perform torque inspections in accordance with Boeing Alert Service Bulletin 737-57A1208, dated March 29, 1990, or Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990, as applicable. If the bolt turns at or below the specified torque range, prior to further flight, replace it with BACB30LE or BACB30US in accordance with the previously mentioned service bulletins. Replacement of any bolt with a bolt BACB30LE or BACB30US constitutes terminating action for the repetitive torque inspections.

3. If a bolt other than listed in paragraph A.1. or A.2., above, is found, prior to further flight, replace the bolt with bolt BACB30LE or BACB30US in accordance with Boeing Alert Service Bulletin 737-57A1208, dated March 29, 1990, or Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990, as applicable.

B. Within 4 years after the effective date of this AD, replace all outboard flap support fitting attach bolts BACB30MT with bolt BACB30LE or BACB30US in accordance with Boeing Alert Service Bulletin 737-57A1208, dated March 29, 1990, or Boeing Alert Service Bulletin 737-57A1206, dated April 12, 1990, as applicable.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle Aircraft Certification Office (ACO), and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence of the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by the directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 29, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16004 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-110-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes which currently requires inspection of the fuselage skin lap splice between body station (BS) 340 and BS 400 at stringers (S)-6L and S-6R, and repair, if necessary. This action would delete the option of reinspecting known small cracks in lieu of repairing them before further flight, and would reduce the repetitive inspection interval. This proposal is prompted by further FAA consideration of the crack repair deferral option in the existing AD, and analysis results which indicate that a reduction of the inspection interval is warranted. This condition, if not corrected, could result in sudden loss of cabin pressurization and the inability to withstand fail-safe loads.

DATES: Comments must be received no later than August 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-110-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-110-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On September 26, 1985, the FAA issued AD 85-17-05, Amendment 39-5123 (50 FR 3335, August 19, 1985), to require inspection of the fuselage skin lap splice between body station (BS) 340 and BS 400 at stringers (S)-6L and S-6R on certain Boeing Model 747 series airplanes. That action was prompted by reports of cracks of up to 18.5 inches found on three airplanes. This condition, if not corrected, could result in sudden loss of cabin pressurization and the inability to the fuselage to withstand fail-safe loads.

That AD provided an option of reinspecting known small cracks in lieu of repairing them before further flight. This option was predicated on crack growth analysis which indicated that inspection could safely monitor cracks until they reached a specified length.

Since issuance of the AD, the FAA has reassessed the advisability of relying on continued inspection to monitor crack growth in this case. It is possible that inspection may fail to detect other small cracks, that a mistake could be made in record keeping necessary to monitor crack growth, or that other undetected adjacent structural damage may exist. These situations could have an unacceptable effect on structural integrity of the effected lap splice. Therefore, the FAA has determined that the deferment of repair of certain known cracks does not provide an acceptable level of safety. This action proposes to eliminate that option.

In addition, the FAA-sponsored 747 Aging Fleet Structures Working Group has recommended that the repetitive inspection interval for structures in which no cracking is found be reduced from 5,000 to 3,000 landings. The reduced inspection interval will ensure that cracking is detected in a more timely manner. Failure to detect and repair cracks could lead to sudden loss of cabin pressurization and the inability to withstand fail-safe loads.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990, which describes the inspection procedures to inspect for cracks in the fuselage skin lap splice between BS 340 and BS 400 at S-6L and S-6R on certain Boeing Model 747 airplanes. (The inspection procedures described in Revision 2 are similar to those described in the previous versions of this service bulletin.) A modification is described in the service bulletin, which consists of replacing the top row of fasteners with protruding head fasteners or installing an external doubler. Inspections are to continue after the accomplishment of this modification.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 85-17-05 with a new airworthiness directive that would require inspections for cracks in the fuselage skin lap splice between BS 340 and BS 400 at S-6L and S-6R, in accordance with the service bulletin previously described. It would delete the previous optional provision of continued flight with certain small cracks; such cracking would be required to be repaired prior to further flight. This proposal would also reduce the repetitive inspection interval from 5,000 to 3,000 landings.

There are approximately 603 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 191 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost

impact of the AD on U.S. operators is estimated to be $61,120.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by superseding AD 85-17-05, Amendment 39-5123 (50 FR 3335, August 19, 1985), with the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 747 series airplanes, identified in Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent sudden loss of cabin pressurization and the inability to withstand fail-safe loads, accomplish the following:

A. For airplanes that have not been modified in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990: In accordance with the schedule indicated below, perform a high frequency eddy current inspection of the fuselage lap joint between body station (BS) 340 and BS 400, or aft as far as the crew door, at stringer (S)-6L and S-6R, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

1. Inspection schedule.

a. Unless previously accomplished within the last 2,750 landings, perform the initial inspection within the next 250 landings after the effective date of this AD, or prior to the accumulation of 10,000 landings, whichever occurs later.

b. Repeat the inspection thereafter at intervals not to exceed 3,000 landings.

2. If cracks are found, repair prior to further flight, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

B. For airplanes that have been modified in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990: In accordance with the schedule below, perform a high frequency eddy current inspection of the fuselage lap joint between (BS) 340 and BS 400, or aft as far as the crew door, at stringers (S)-6L and S-6R, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

1. Inspection schedule:

a. Unless previously accomplished within the last 2,750 landings, perform the initial inspection within the next 250 landings after the effective date of this AD, or prior to the accumulation of 10,000 landings, after the modification, whichever occurs later.

b. Repeat the inspection thereafter at intervals not to exceed 3,000 landings.

2. If cracks are found, repair prior to further flight, in accordance with Boeing Service Bulletin 747-53-2253, Revision 2, dated March 29, 1990.

C. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16005 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-124-AD]

Airworthiness Directives; Boeing Model 727-200 and 727-200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 727-200 series airplanes, which would require inspection of the fuselage skin under the center engine inlet pedestal housing for cracks, and repair, if necessary. This proposal is prompted by reports of fuselage skin cracks in this area. This condition, if not corrected, could result in rapid depressurization of the cabin.

DATES: Comments must be received no later than September 4, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-124-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-1205; telephone (206) 431-1525. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 91868.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-124-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of fuselage skin cracks under the center engine pedestal housing at stringer 1 from body station (BS) 1090 to BS 1110 on Boeing Model 727-200 series airplanes. There were also two reports of fuselage skin cracks emanating from the fastener holes where the pedestal housing mates with the fuselage. The cracks are fatigue related and are attributed to skin bending induced by the installation of the center engine inlet assembly. Undetected cracks in these areas can result in rapid depressurization of the cabin.

The cracks have only been reported on the Model 727-200 series airplanes. The center engine inlet housing attachment is significantly different on the Model 727-100 series airplanes and a similar problem is not expected.

The FAA has reviewed and approved Boeing Service Bulletin 727-53A0204, Revision 1, dated May 10, 1990, which describes procedures for inspection and repair of the fuselage skin under the center engine inlet pedestal housing.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for cracking of the fuselage skin under the center engine inlet pedestal housing, and repair, if necessary, in accordance with the service bulletin previously described.

There are approximately 1,250 Model 727-200 and 727-200F series airplanes of the affected design in the worldwide fleet. It is estimated that 1,000 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $240,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly pursant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by adding the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to all Model 727-200 and 727-200F series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid depressurization of th cabin due to fuselage cracks under the center engine inlet pedestal housing, accomplish the following:

A. Perform a detailed external visual inspection for fuselage skin cracks from body station (BS) 1090 to BS 1110, in accordance with Boeing Alert Service Bulletin 727-53A0204, Revision 1, dated May 10, 1990, (hereafter referred to as the Service Bulletin), within the time specified in subparagrpah 1., 2., or 3., below, as applicable.

1. For airplanes identified as Group 1 in the Service Bulletin, inspect within 500 flight cycles or 2 months after the effective date of this AD, whichever occurs first.

2. For airplanes identified as Group 2 in the Service Bulletin, inspect within 1,250 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

3. For airplanes identified as Group 3 in the Service Bulletin, inspect wthin 2,500 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

B. Repeat the insepction required by paragraph A., above, at intervals not to exceed 2,500 flight cycles or 18 months, whichever occurs first.

C. If fuselage skin cracks are found, prior to further flight, repair in accordance with the Service Bulletin.

D. Modification in accordance with Boeing Drawing 65C35757 constitutes terminating action for the inspection required by paragraph B., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certificiation Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707 Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or

Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 2, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16006 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-127-AD]

Airworthiness Directives; Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Fokker Model F-27 Mark 100, 200, 300, 400, 500, 600 and 700 series airplanes, which currently requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This action would revise the inspection program to add or revise significant structural items to inspect for fatigue cracks. This proposal is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

DATES: Comments must be received no later than August 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-127-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-NM-127-AD." The postcard will be date/time stamped and returned to the commenter.

Discussion

On March 29, 1990, the FAA issued AD 90-08-09, Amendment 39-6570 (55 FR 13261, April 10, 1990), to require certain revisions and additions to the approved maintenance program that provides for inspection, repair or replacement, as applicable, of the significant structural items defined in Fokker Document No. 27438, part I. That action was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected, could result in a reduction of the structural integrity of these airplanes.

Since issuance of the AD, Fokker Structural Integrity Program (SIP) Document No. 27438, part I, has been revised to add or revise items for inspection, repair, or replacement. These additional or revised items were included as result of (1) fatigue analysis and tests, (2) service experience, (3) follow-up action to an airworthiness directive that required a one-time inspection and report of findings to the manufacturer, and (4) in some cases, an interim repair.

Fokker has issued Fokker Document No. 27438, part I, including revisions up through February 1, 1990, which adds or revises items for inspection, and repair or replacement, as necessary. The Rijksluchtvaartdienst, which is the airworthiness authority of the Netherlands, has classified the Fokker Document as mandatory.

This airplane model is manufacturerd in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-08-09 with a new airworthiness directive that would require incorporation of revisions through February 1, 1990, to the Fokker SIP Document No. 27438, part I, into the FAA-approved maintenance program.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 243 manhours per airplanes per year to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $427,680 the first year and annually thereafter.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by superseding Amendment 39-6570 (55 FR 13261, April 10, 1990), AD 90-08-09, with the following new airworthiness directive:

§ 39.13 [Amended]

Fokker: Applies to Model F-27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, all serial numbers, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the structural integrity of these airplanes, accomplish the following:

A. Within six months after May 14, 1990 (the effective date of Amendment 39-6570, AD 90-08-09), incorporate into the FAA-approved maintenance inspection program the inspections, inspection intervals, repairs, or replacements defined in Fokker SIP Document No. 27438, part I, including revisions up through August 15, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document.

B. Within six months after the effective date of this amendment, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs, or replacements defined in Fokker Structural Inspection Program (SIP) Document No. 27438, part I, including revisions up through February 1, 1990; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the SIP document.

C. Cracked structure detected during the inspections required by paragraph A., and B., above, must be repaired or replaced, prior to further flight, in accordance with instructions in Document No. 27438, including revisions up through February 1, 1990.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16007 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-97-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes; Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) Series Airplanes; and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series airplanes, which currently requires installation of a "tailcone missing" indication system. This action would require installation of a "tailcone unsafe" indicating system. This proposal is prompted by instances of tailcone departure from aircraft during landing roll. This condition, if not corrected, could result in a hazard to incoming or departing aircraft, particularly during night or low visibility conditions.

DATES: Comments must be received no later than August 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-97-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846; ATTN: Business Unit Manager, Technical Publications C1-HCW (54-60). This information may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received or or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped

post card on which the following statement is made: "Comments to Docket Number 90-NM-97-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On June 23, 1987, the FAA issued AD 87-13-09, Amendment 39-5665 (52 FR 24982, July 2, 1987), to require installation of a "tailcone missing" indicating system on all McDonnell Douglas Model DC-9 series airplanes. That action was prompted by numerous reports of inadvertent tailcone deployments. This condition, if not corrected, could result in an inadvertently deployed tailcone becoming a hazard to other aircraft using the runway, particularly during night or low visibility conditions.

Since issuance of that AD, there have been additional reports of inadvertent tailcone deployment on landing roll. There have been seven incidents since April 1, 1989. Each of the aircraft involved in the most recent incidents had an operable tailcone missing indicating system, as required by AD 87-13-09. Five of the seven recent inadvertent tailcone releases involved improper rigging or inadvertent activation of the tailcone release handle.

McDonnel Douglas has developed, and some airlines have installed, a "tailcone unsafe" indicating system which alerts the crew when the tailcone unlocking cable is not properly secured. Installation of a tailcone unsafe indicating system precludes takeoff with the tailcone not properly latched. The FAA has reviewed and approved McDonnell Douglas Service Bulletin 53-199, Revision 2, dated March 17, 1989, which describes procedures for installation of a "tailcone unsafe" indicating system which requires installation of two mechanical switches in the tailcone locking system and an indicating light in the pilot's field of vision.

Two recent cases involved Model DC-9-80 series airplanes in which the tailcone release actuating mechanism activated during flight. The tailcone release actuating mechanism on these models is located in the cabin ceiling area above the aft ventral door and is accessible in flight. There is a slotted shroud around the mechanism. The slot allows access to the mechanism by passengers in the cabin. An FAA review of the tailcone release system on Model DC-9-80 series and Model MD-88 airplanes concluded that passengers could activate the tailcone deployment mechanism with their fingers. In order to minimize possible in-flight actuation of the tailcone release system, the FAA proposes to require a cover over the slot in the shroud on these models. In the event the tailcone becomes unlocked/unlatched in flight, the "tailcone unsafe" indicating system will allow the flight crew to alert the tower early enough to effect timely safety precautions at the airport. After the tailcone unsafe indicating system is installed and functioning, the tailcone missing indicating system, installed in accordance with AD 87-13-09, is no longer required and may be removed.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 87-13-09 with a new airworthiness directive that would require installation of a "tailcone unsafe" indicating system, in accordance with the service bulletin previously described, and, in addition, a cover over the actuating mechanism slot above the aft ventral door on certain models, as described above.

There are approximately 1,575 Model DC-9-10, -20, -30, -40, -50 series airplanes; Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87) series airplanes; and Model MD-88 airplanes; of the affected design in the worldwide fleet. It is estimated that 800 airplanes of U.S. registry would be affected by this AD, that it would take approximately 38 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of parts to accomplish this modification is estimated to be $1,600 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,496,000.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. Section 39.13 is amended by superseding Amendment 39-5665 (52 FR 24982, July 2, 1987), AD 87-13-09, with the following new airworthiness directive:

§ 39.13 [Amended]

McDonnell Douglas: Applies to Model DC-9-10, -20, -30, -40, -50 series airplanes; and Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87) series airplanes; and Model MD-88 airplanes; as listed in McDonnell Douglas Service Bulletin 53-199, Revision 2, dated March 17, 1989; operating in passenger or passenger/cargo configuration; certificated in any category. Compliance required as indicated, unless previously accomplished.

The requirements of this AD become applicable at the time an all-cargo configuration is converted to a passenger or passenger/cargo configuration.

To prevent unexpected tailcone development on landing, accomplish the following:

A. Within 24 months after August 8, 1987 (the effective date of Amendment 39-5665, AD 87-13-09), install a visual indicating means, which is approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, that will signal the appropriate flight crew members when the tailcone is not attached to the airplane.

Note: Any modification to install a tailcone missing indicating system that was previously determined by the FAA to comply with AD 87-13-09, meets the requirements of this paragraph.

Note: Modification is not required on all-cargo configured airplanes for which an alternate means of compliance was established for AD 87-13-09, in which the tailcone release system has been deactivated and the tailcone latches are positively retained in the latched position in a manner acceptable to the Manager, Los Angles ACO, FAA, Transport Airplane Directorate. However, the tailcone release system must be

reactivated prior to further flight upon conversion to a passenger or passenger/cargo configuration.

B. Within 24 months after the effective date of this amendment, accomplish either paragraph 1. or 2. below, as applicable

1. Modify airplanes in a passenger or passenger/cargo configuration by installing the "tailcone unsafe" indicating system in accordance with paragraph 2, Accomplishment Instructions of McDonnell Douglas Service Bulletin 53-199, Revision 2, dated March 17, 1989; or

2. Modify airplanes in an all-cargo configuration by deactivating the tailcone release system in a manner approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

C. For Model DC-9-80 series airplanes and model MD-88 airplanes: Within 24 months after effective date of this amendment, modify the tailcone release actuating mechanism shroud by installing a cover over the slot so the mechanism is not exposed to the cabin. This modification must be accomplished in a manner approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

D. Upon accomplishment of paragraph B.1 of this AD, the requirements of paragraph A. of this AD are no longer applicable and the visual indicating means installed in accordance with that paragraph may be removed.

E. An alternate means of compliance or adjustment of the compliance time, which provides and acceptable level of safety, may be used when approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90801. These documents may be examined at the FAA, Transport Airplane Directorate, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 28, 1990.

Darell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16008 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-120-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes; and Model DC-9-81 and -82 (MD-81 and -82) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, which would require replacement of the air filler valve assembly on the nose gear wheel and tire assembly. This proposal is prompted by reports of over-inflation of nose landing gear tires. This condition, if not corrected, could result in a tire/wheel explosion, which might result in injury to maintenance personnel or damage to the airplane.

DATES: Comments must be received no later than August 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-120-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-120-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Two instances have occurred, involving McDonnell Douglas Model DC-9 series airplanes, in which maintenance personnel have been injured due to the explosion of an over-inflated nose landing gear tire/wheel assembly. Other instances have been reported of over-inflated nose landing gear tires. The assemblies installed on Model DC-9 and DC-9-80 series airplanes are similar in design. Investigation has revealed that certain airplanes may have been delivered with wheels which do not have over-inflation safeguard features. This condition, if not corrected, could result in injury to maintenance personnel and damage to the airplane.

The FAA has reviewed and approved McDonnell Douglas DC-9 Service Bulletin 32-223, dated November 7, 1989, which describes replacement of the air filler valve assembly on the nose gear wheel and tire assemblies. The replacement filler valve assembly incorporates an over-pressure relief feature not in the existing filler valve assembly.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require replacement of the nose gear tire filler valve in accordance with the service bulletin previously described.

There are approximately 1,100 Model DC-9 series airplanes of the affected

design in the worldwide fleet. It is estimated that 670 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The cost of required parts is approximately $119 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $160,130.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes, and Model DC-9-81 and -82 (MD-81 and -82) series airplanes; serial numbers as listed in McDonnell Douglas DC-9 Service Bulletin 32-223, dated November 7, 1989; certification in any category. Compliance required as indicated, unless previously accomplished. To prevent nose landing gear tire/wheel assembly explosion due to over-inflation, accomplish the following:

A. Within one year after the effective date of this AD, unless previously accomplished, replace the air filler valve on the nose gear wheel and tire assemblies with fill/over-pressure relief valve assemblies, in accordance with Paragraph 2., Accomplishment Instructions, Phase 1, of McDonnell Douglas DC-9 Service Bulletin 32-223, dated November 7, 1989. If the original nose wheel assembly has been replaced with wheel assembly 9550267-6, which has a built-in over-pressure relief feture, no action is required.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles, ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirments of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16009 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-121-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -83 (MD-81, -82, and -83) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, which would require replacement of the oxygen mask and hose assemblies at the mid attendant's station. This proposal is prompted by reports of oxygen mask hoses which are too short to permit the desired mobility for the mid attendant. This condition, if not corrected, could result in the mid attendant's oxygen mask not staying properly positioned if the attendant is required to move; this situation could lead to a temporary loss of oxygen to the flight attendant.

DATES: Comments must be received no later than August 28, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-121-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-121-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The manufacturer has advised the FAA that, at the mid attendant's station on McDonnell Douglas Model DC-9-80 series airplanes, the oxygen hoses are too short to permit the desired mobility of the mid attendant. A taller attendant must extend the oxygen mask hose to its limit when donning the mask. With this situation, expected movements (such as turning to look into the passenger area) will pull the oxygen mask off the user's face. This condition, if not corrected, could result in a temporary loss of oxygen to the flight attendant.

The FAA has reviewed and approved McDonnell Douglas MD-80 Service Bulletin 35-18, dated May 15, 1990, which describes replacement of the oxygen mask and hose assembly at the mid attendant's station with a longer hose length assembly.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require replacement of the mask and hose assembly at the mid attendant's stations in accordance with the service bulletin previously described.

There are approximately 268 Model MD-80 series airplanes of the affected design in the worldwide fleet. It is estimated that 251 airplanes of U.S. registry would be affected by this AD, that it would take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. There is no cost for required parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,020.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would hot have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Felxibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-81, -82, and -83 (MD-81, -82, and -83) series airplanes, serial numbers as listed in McDonnell Douglas MD-80 Service Bulletin 35-18, dated May 15, 1990, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure the mid attendant's oxygen mask stays properly positioned during the attendant's movements, accomplish the following:

A. Within one year after the effective date of this AD, replace the oxygen mask and hose assemblies at the mid attendant's station in accordance with the Accomplishment Instructions of McDonnell Douglas MD-80 Service Bulletin 35-18, dated May 15, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airline Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

c. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-16010 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-06]

Proposed Alteration of Control Zone; Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to revise the Chantilly, VA, Control Zone by reducing the north arrival extension for this Control Zone to an area which is actually required by the FAA to contain arriving aircraft at the Washington Dulles International Airport, Washington, DC, within controlled airspace from the surface upward to the base of other controlled airspace. The remainder of the Chantilly, VA, Control Zone would remain unaltered by this change. Additionally, minor changes to the description are being made to reflect the actual name of the airport, as well as the actual geographic position. The FAA

finds this proposed action necessary due to the results of a review of the airspace requirements in the area. This proposed action would lessen the burden upon the public by returning that amount of controlled airspace not needed by the FAA to (contain aircraft operating under instrument flight rules) back to the general public.

DATES: Comments must be received on or before August 17, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 90-AEA-06, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530 Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AEA-06". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposed contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description of the Chantilly, VA, Control Zone by reducing the north arrival extension and updating the name and geographic position of the Washington Dulles International Airport, Washington, DC. § 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control Zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Chantilly, VA [Amended]

Replace the first three occurrences of "Dulles International Airport" with "Washington Dulles International Airport";

Change "lat. 38°56'40" N., long. 77°27'24" W." to read "lat. 38°56'39" N., long. 77°27'26" W.";

Change "and within 3.5 miles each side of the Dulles International Airport Runway 19R ILS localizer course, extending from the 5.5-mile radius zone to 10 miles north of the OM.", to read "; within 1 mile west of the Washington Dulles International Airport Runway 19R ILS localizer course to 1 mile east of the Washington Dulles International Airport Runway 19L localizer course, extending from the 5.5-mile radius zone to 0.5 miles north of the Runway 19R OM.".

Issued in Jamaica, New York, on June 15, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90-16011 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-ASW-34]

Proposed Establishment of Transition Area; Hamilton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Hamilton, TX. The development of a new standard instrument approach procedure (SIAP) to the Hamilton Municipal Airport, utilizing the new Hamilton Nondirectional Radio Beacon (NDB), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for all aircraft executing this new SIAP. If

this proposal is adopted, the status of the Hamilton Municipal Airport would change from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before August 22, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division Southwest Region, Docket No. 90-ASW-34, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or, arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASW-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Hamilton, TX. The development of a new NDB RWY 36 SIAP to the Hamilton Municipal Airport, utilizing the new Hamilton NDB, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for all aircraft executing the NDB RWY 36 SIAP. If this proposal is adopted, the status of the Hamilton Municipal Airport would change from VFR to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Hamilton, TX [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Hamilton Municipal Airport (latitude 31°40'15"N., longitude 98°08'45"W.) and 1.5 miles each side of the 002° bearing of the Hamilton NDB (latitude 31°37'12"N., longitude 98°08'50"W.), extending from the 6.5-mile radius area to 11 miles north of the Hamilton Municipal Airport.

Issued in Fort Worth, TX, on June 19, 1990.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 90-16012 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 175, 176, and 177

RIN 1076-AC24

Indian Electric Power Utilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is revising regulations governing the electric power portion (utilities) of the Colorado River, Flathead, and San Carlos Indian irrigation projects. The purpose of these revisions is to provide for the consistent administration of the utilities, to establish procedures for updating the practices and procedures of the utilities so as to better reflect those of the industry, and to establish procedures to adjust electric power rates and service fees. The proposed regulations determine the format for updating the practices and procedures of the utilities and the procedures for adjusting electric power rates (as needed) and service fees, with public involvement, to cover the expense of power and providing of service.

DATES: Comments must be received on or before August 9, 1990.

ADDRESSES: Written comments should be mailed or handcarried to Samuel M. Miller, Chief, Division of Water and Land Resources, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets NW., room 4559 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mort S. Dreamer, Supervisory General Engineer, Branch of Irrigation and Power, Division of Water and Land Resources, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets NW., room 4559 MIB, Washington, DC 20240, Phone Number (202) 208–5696.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

This action consolidates former parts 175, 176, and 177 into part 175 which is retitled "Indian Electric Power Utilities." Former parts 175, 176, and 177 regulated the utilities of the Colorado River, Flathead, and San Carlos Indian irrigation projects, respectively. The provisions of those parts did not reflect current practices and procedures of the electric utility industry and did not include procedures for setting electric power rates and service fees. Until this time, rate-setting has been accomplished by the time-consuming rule-making process, and if continued may cause financial instability within the utilities. This proposed rule establishes procedures for the Area Directors to adjust electric power rates and service fees, includes public involvement in the rate-setting process, and provides procedures for updating the practices and procedures for the utilities.

The proposed rule is intended to promote consistent administration of the utilities previously regulated by former parts 175–177, as well as other existing and future utilities of the Bureau of Indian Affairs. It is the policy of the Bureau of Indian Affairs to provide safe and reliable electric service, treat electric customers equitably, maintain fiscal integrity, and manage electric power utilities efficiently.

The policy of the Bureau of Indian Affairs is to afford the public an opportunity to participate in the rule-making process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule. The Department will consider all comments received during the period for public comment, and will issue the rule in final form, with any revisions found to be necessary. Interested persons may submit written comments regarding the Rule to the locations identified in the **"ADDRESSES"** section of this preamble.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Since increases and decreases in the cost of electric power service will be paid by the approximately 5,000 customers served by the utilities, of which less than 15 percent comprise the small entities in the project service area. The Department also has determined that this document does not constitute a major Federal action significantly affecting the human environment, and that no detailed statement is required pursuant to the Environmental Policy Act of 1969. The information collection requirement contained in § 175.22 has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and assigned clearance number 1076–0021. It takes about 30-minutes for an individual to respond to the information collection.

Authorship Statement

The primary authors of this document are: Ralph Esquerra, Project Manager, San Carlos Indian Irrigation Project, Bureau of Indian Affairs; Ross Mooney, Acting Land Operations Officer, Colorado River Agency, Bureau of Indian Affairs; Warren McConkey, Power Division Manager, Flathead Agency, Bureau of Indian Affairs; Mort S. Dreamer, Supervisory General Engineer, Bureau of Indian Affairs; and Barbara Scott-Brier, Attorney-Advisor, Office of the Solicitor, Department of the Interior.

List of Subjects in 25 CFR Parts 175, 176, and 177

Electric power, Indians-land, Irrigation, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Chapter 10 of Title 25 of the Code of Federal Regulations is amended by removing parts 176 and 177 and revising part 175 to read as follows:

PART 175—INDIAN ELECTRIC POWER UTILITIES

Subpart A—General Provisions

Subpart B—Service Fees, Electric Power Rates and Revenues

Subpart C—Utility Service Administration

Subpart D—Billing, Payments, and Collections

Subpart E—System Extensions and Upgrades

Subpart F—Rights-of-Way

Subpart G—Appeals

Authority: 5 U.S.C. 301; Sec. 2 49 Stat. 1039–1040; 54 Stat. 422; Sec. 5 43 Stat. 475–476; 45 Stat. 210–211; and sec. 7, 62 Stat. 273.

Subpart A—General Provisions

§ 175.1 Definitions.

(a) *Appellant* means any person who files an appeal under this part.

(b) *Area Director* means the Bureau of Indian Affairs official in charge of a designated Bureau of Indian Affairs Area, or an authorized delegate.

(c) *Customer* means any individual, business, or government entity which is provided, or which seeks to have provided, services of the utility.

(d) *Customer Service* means the assistance or service provided to customers, other than the actual

delivery of electric power or energy, including but not limited to such items as: Line extension, system upgrade, meter testing, connections or disconnections, special meter-reading, or other assistance or service as provided in the operations manual.

(e) *Electric Power Utility or Utility* means that program administered by the Bureau of Indian Affairs which provides for the marketing of electric power or energy.

(f) *Electric Service* means the delivery of electric energy or power by the utility to the point of delivery pursuant to a service agreement or special contract. The requirements for such delivery are set forth in the operations manual.

(g) *Officer-in-charge* means the individual designated by the Area Director as the official having day-to-day authority and responsibility for administering the utility, consistent with this part.

(h) *Operations Manual* means the utility's written compilation of its procedures and practices which govern service provided by the utility.

(i) *Power Rates* means the charges established in a rate schedule(s) for electric service provided to a customer.

(j) *Service* means electric service and customer service provided by the utility.

(k) *Service Agreement* means the written form provided by the utility which constitutes a binding agreement between the customer and the utility for service except for service provided under a special contract.

(l) *Service Fees* means the charge for providing administrative or customer service to customers, prospective customers, and other entities having business relationships with the utility.

(m) *Special Contract* means a written agreement between the utility and a customer for special conditions of service. A special contract may include, but is not limited to, such items as: street or area lights, traffic lights, telephone booths, irrigation pumping, unmetered services, system extensions and extended payment agreements.

(n) *Utility Office(s)* means the current or future facility or facilities of the utility which are used for conducting general business with customers.

§ 175.2 Purpose

The purpose of this part is to regulate the electric power utilities administered by the Bureau of Indian Affairs.

§ 175.3 Compliance.

All utility customers and the utilities are bound by the rule in this part.

§ 175.4 Authority of area director.

The Area Director may delegate authority under this part to the Officer-in-Charge, except for the authority to set rates as described in §§ 175.10 through 175.13.

§ 175.5 Operations manual.

(a) The Area Director shall establish an operations manual for the administration of the utility, consistent with this part and all applicable laws and regulations. The Area Director shall amend the operations manual as needed.

(b) The public shall be notified by the Area Director of a proposed action to establish or amend the operations manual. Notices of the proposed action shall be published in local newspaper(s) of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall contain: a brief description of the proposed action; the effective date; the name, address, and telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 30 days before the scheduled effective date of the operations manual, or amendments thereto.

(c) After giving consideration to all comments received, the Area Director shall establish or amend the operations manual, as appropriate. A notice of the Area Director's decision and the basis for the decision shall be published and posted in the same manner as the previous notices.

§ 175.6 Information collection.

The information collection requirement contained in § 175.22 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1076–0021. This information is collected for the purpose of providing electric power service to consumers. Public reporting burden for this form is estimated to average 0.5 hours per response, including the time for reviewing instructions, gathering and maintaining data and completing and reviewing the form.

Subpart B—Service Fees, Electric Power Rates and Revenues

§ 175.10 Revenues collected from power operations.

The Area Director shall set service fees and electric power rates in accordance with the procedures in §§ 175.11 and 175.12 to generate power revenue.

(a) *Revenues.* Revenues collected from power operations shall be administered for the following purposes, as provided in the Act of August 7, 1946 (60 Stat. 895), as amended by the Act of August 31, 1951 (65 Stat. 254):

(1) Payment of the expenses of operating and maintaining the utility;

(2) Creation and maintenance of reserve Funds to be available for making repairs and replacements to, defraying emergency expenses for, and insuring continuous operation of the utility;

(3) Amortization, in accordance with repayment provisions of the applicable statutes or contracts, of construction costs allocated to be returned from power revenues; and

(4) Payment of other expenses and obligations chargeable to power revenues to the extent required or permitted by law.

(b) *Rate and fee reviews.* Rates and fees shall be reviewed at least annually to determine if project revenues are sufficient to meet the requirements set forth in paragraph (a) of this section. The review process shall be as prescribed by the Area Director.

§ 175.11 Procedures for setting service fees.

The Area Director shall establish, and amend as needed, service fees to cover the expense of customer service. Service fees shall be set by unilateral action of the Area Director and remain in effect until amended by the Area Director pursuant to this section. At least 30 days prior to the effective date, a schedule of the service fees, together with the effective date, shall be published in local newspaper(s) of general circulation and posted in the utiity office(s). The Area Director's decision shall be final for the Department of the Interior.

§ 175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.

Except for adjustments to rates due to changes in the cost of purchased power or energy, the Area Director shall adjust electric power rates according to the following procedures:

(a) Whenever the review described in § 175.10(b) indicates that an adjustment in rates may be necessary for reasons other than a change in cost of purchased power or energy, the Area Director shall direct further studies to determine whether a rate adjustment is necessary and, if indicated, prepare proposed rate schedules.

(b) Upon completion of the rate studies, and where a rate adjustment has been determined necessary, the

Area Director shall conduct public information meetings as follows:

(1) Notices of public meetings shall be published in local newspapers of general circulation, posted at the utility office(s), and provided by such other means, if any, as determined by the Area Director. The notice shall provide: the date, time, and place of the scheduled meeting; a brief description of the proposed action; the name, the address, and the telephone number for addressing comments and inquiries; and the period of time in which comments will be received. Notices shall be published and posted at least 15 days before the scheduled date of the meeting.

(2) Written and oral statements shall be received at the public meetings. The record of the public meeting shall remain open for the filing of written statements for five days following the meeting.

(c) After giving consideration to all written and oral statements, the Area Director shall make a decision about a rate adjustment. A notice of the Area Director's decision, the basis for the decision, and the adjusted rate schedule(s), if any, shall be published and posted in the same manner as the previous notices of public meetings.

(d) Rates shall remain in effect until further adjustments are approved by the Area Director pursuant to this part.

§ 175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.

Whenever the cost of purchased power or energy changes, the effect of the change on the cost of service shall be determined and the Area Director shall adjust the power rates accordingly. Rate adjustments due to the change in cost of purchased power or energy shall become effective upon the unilateral action of the Area Director and shall remain in effect until amended by the Area Director pursuant to this section. A notice of the rate adjustment, the basis for the adjustment, the rate schedule(s) shall be published and posted in the same manner as described in § 175.12(c). The Area Director's decision shall be final for the Department of the Interior.

Subpart C—Utility Service Administration

§ 175.20 Gratuities.

All employees of the utility are forbidden to accept from a customer any personal compensation or gratuity rendered related to employment by the utility.

§ 175.21 Discontinuance of service.

Failure of customer(s) to comply with utility requirements as set forth in this part and the operations manual may result in discontinuance of service. The procedure(s) for discontinuance of service shall be set forth in the operations manual.

§ 175.22 Requirements for receiving electrical services.

In addition to the other requirements of this part, the customer, in order to receive electrical service, shall enter into a written service agreement or special contract for electrical power services.

§ 175.23 Customer responsibilities.

The customer(s) of a utility subject to this part shall:

(a) Comply with the National Electrical Manufacturers Association Standards and the National Electrical Code as they apply to the installation and operation of customer-owned equipment;

(b) Be responsible for payment of all financial obligations resulting from receiving utility service;

(c) Comply with additional requirements as further defined in the operational manual;

(d) Not operate or handle the utility's facilities without the express permission of the utility;

(e) Not allow the unauthorized use of electricity; and

(f) Not install or utilize equipment which will adversely affect the utility system or other customers of the utility.

§ 175.24 Utility responsibilities.

A utility subject to this part shall:

(a) Endeavor to provide safe and reliable energy to its customers. The specific types of service and limitations shall be further defined in the operations manual;

(b) Construct and operate facilities in accordance with accepted industry practice;

(c) Exercise reasonable care in protecting customer-owned equipment and property;

(d) Comply with additional requirements as further defined in the operations manual;

(e) Read meters or authorize the customer(s) to read meters at intervals prescribed in the operations manual, service agreement, or special contract, except in those situations where the meter cannot be read due to conditions described in the operations manual;

(f) Not operate or handle customer-owned equipment without the express permission of the customer, except to eliminate what, in the judgment of the utility, is an unsafe condition; and

(g) Not allow the unauthorized use of electricity.

Subpart D—Billing, Payments, and Collections

§ 175.30 Billing.

(a) *Metered customers.* The utility shall render bills at monthly intervals unless otherwise provided in special contracts. Bills shall be used on the applicable rate schedule(s). Unless otherwise determined, the amount of energy and/or power demand used by the customer shall be as determined from the register on the utility's meter at the customer's point of delivery. A reasonable estimate of the amount of energy and/or power demand may be made by the utility in the event a meter is found with the seal broken, the utility's meter fails, utility personnel are unable to obtain actual meter registrations, or as otherwise agreed by the customer's prior consumption, or on an estimate of the customer's electric load where no billing history exists.

(b) *Unmetered customers.* Bills shall be determined and rendered as provided in the customer's special contract.

(c) *Service fee billing.* The utility shall render service fee bills to the customer(s) as a special billing.

§ 175.31 Methods and terms of payment.

Payments shall be made in person or by mail to the utility's office designated in the operations manual. The utility may refuse, for cause, to accept personal checks for payment of bills.

§ 175.32 Collections.

The utility shall attempt collection on checks returned by the customer's bank due to insufficient funds or other cause. An administrative fee shall be charged for each collection action taken by the utility other than court proceedings. An unredeemed check shall cause the customer's account to become delinquent, which may be cause for discontinuance of service. Only legal tender, a cashier's check, or a money order shall be accepted by the utility to cover an unredeemed check and associated charges.

Subpart E—System Extensions and Upgrades

§ 175.40 Financing of extensions and upgrades.

(a) The utility may extend or upgrade its electric system to serve additional loads (new or increased loads).

(b) If funds are not available, but the construction would not be adverse to

the interests of the utility, a customer may contract with the utility to finance all necessary construction.

(1) A customer may be allowed to furnish required material or equipment for an extension or upgrade or to install such items or to pay the utility for such installation. Any items furnished or construction performed by the customer shall comply with the applicable plans and specifications approved by the utility.

(2) The utility may arrange to refund all or part of a customer's payment of construction costs if additional customers are later served by the same extension or if the Area Director determines that the service will provide substantial economic benefits to the utility. All arrangements for refunds shall be stipulated in a special contract.

Subpart F—Rights-of-Way

§ 175.50 Obtaining rights-of-way.

Where there is no existing right(s)-of-way for the utility's facilities, the customer shall be responsible for obtaining all rights-of-way necessary to the furnishing of service.

§ 175.51 Ownership.

All rights-of-way, material, or equipment furnished and/or installed by a customer pursuant to this part shall be and remain the property of the United States.

Subpart G—Appeals

§ 175.60 Appeals to the area director.

(a) Any person adversely affected by a decision made under this part by a person under the authority of an Area Director may file a notice of appeal with the Area Director within 30 days of the personal delivery or mailing of the decision. The notice of appeal shall be in writing and shall clearly identify the decision being appealed. No extension of time shall be granted for filing a notice of appeal.

(b) Within 30 days after a notice of appeal has been filed, the appellant shall file a statement of reason(s) with the Area Director. The statement of reason(s) shall explain why the appellant believes the decision being appealed is in error, and shall include any arguments that the appellant wishes to make and all supporting documents. The statement of reasons may be filed at the same time as the notice of appeal. If no statement of reason(s) is filed, the Area Director may summarily dismiss the appeal.

(c) Documents are properly filed with the Area Director when they are received in the facility officially designated for receipt of mail addressed to the Area Director, or in the immediate office of the Area Director.

(d) Within 30 days of filing of the statement of reason(s), the Area Director shall:

(1) Render a written decision on the appeal; or

(2) Refer the appeal to the Interior Board of Indian Appeals for decision.

(e) Where the Area Director has not rendered a decision within 30 days of filing of the statement of reasons, the appellant may file an appeal with the Interior Board of Indian Appeals pursuant to § 175.61.

§ 175.61 Appeals to the Interior Board of Indian Appeals.

(a) An Area Director's decision under this part, except a decision under § 175.11 or 155.13, may be appealed to the Interior Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D. The address for the Interior Board of Indian Appeals shall be included in the operations manual.

(b) Where the Area Director determines to refer an appeal to the Interior Board of Indian Appeals, in lieu of deciding the appeal, he/she shall be responsible for making the referral.

(c) If no appeal is timely filed with the Interior Board of Indian Appeals, the Area Director's decision shall be final for the Department of the Interior.

§ 175.62 Utility actions pending the appeal process.

Pending an appeal, utility actions relating to the subject of the appeal shall be as follows:

(a) If the appeal involves discontinuance of service, the utility is not required to resume such service during the appeal process unless the customer meets the utility's requirements.

(b) If the appeal involves the amount of a bill and:

(1) The customer has paid the bill, the customer shall be deemed to have paid the bill under protest until the final decision has been rendered on the appeal; or

(2) The customer has not paid the bill and the final decision rendered in the appeal requires payment of the bill, the bill shall be handled as a delinquent account and the amount of the bill shall be subject to interest, penalties, and administrative costs pursuant to section 3 of the Federal Claims Collection Act of 1966, *As amended*, 31 U.S.C. 3717.

(c) If the appeal involves an electric power rate, the rate shall be implemented and reamin in effect subject to the final decision on the appeal.

Stephen A. Gleason,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90-15367 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-90-10]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, TX

AGENCY: Coast Guard.

ACTION: Proposed rule.

SUMMARY: At the request of the Long Island Owner's Association, Inc., the Coast Guard is considering a change to the regulation governing the operation of the pontoon bridge across the Gulf Intracoastal Waterway, mile 666.0, at Port Isabel, Texas, to limit the bridge openings for pleasure craft to every hour on the hour from 5 a.m. to 8 p.m. The bridge would continue to open on demand for commercial vessels, and would be required to open on signal for all vessels at all other times. This action would relieve vehicular traffic congestion, reduce the wear and tear on the bridge by limiting the number of openings for pleasure craft, and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 24, 1990.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eight Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are John Wachter, project officer, and Commander J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is zero. Navigation through the bridge consists of commercial vessels, including fishing/shrimp boats and tour boats, and various types of recreational craft. Data submitted by the bridge owner show that about 340 vehicles cross the bridge on a daily basis, while approximately nine commercial vessels and seven pleasure boats pass through the bridge site during the same period. The recreational craft, the only vessels affected by the proposed regulation, can easily adjust their arrival time at the bridge to insure a minimum delay while transiting the waterway. Pleasure vessels will be passed when the draw is open for commercial vessels during the restricted periods. At the same time, motorists can anticipate the possibility of the bridge opening on the hour from 5 a.m. to 8 p.m. and arrange to arrive at the bridge during the period between these scheduled openings.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed limited opening period there will be very little inconvenience for the pleasure vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the proposed regulated period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation of Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.968 is added to read as follows:

§ 117.968 Gulf Intracoastal Waterway.

The draw of the Port Isabel bridge, mile 666.0, shall open on signal; except that, from 5 a.m. to 8 p.m. the draw need open only on the hour for pleasure craft. The draw shall open on signal at any time for commercial vessels, for a vessel in distress, or for an emergency aboard a vessel. When the draw is open for a commercial vessel, waiting pleasure craft shall be passed.

Dated: June 14, 1990.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 90–15959 Filed 7–9–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AE42

Finality of Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulation on finality of decisions. This proposed change is based on advice from the VA General Counsel regarding the point in claims processing at which a decision by VA is considered final and binding. The intended effect of the change is to specify VA actions necessary to make claims final and binding.

DATES: Comments must be received on or before August 9, 1990. This change is proposed to be effective 30 days after the date of publication of the final rule. Comments will be available for public inspection until August 20, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 4, 1990.

FOR FURTHER INFORMATION CONTACT: Phyllis Barber, Consultant, Regulation Staff, Compensation and Pension Service, Veterans Benefits Administration, (202 233–3005.

SUPPLEMENTARY INFORMATION: On November 5, 1963, the phrase "on which an action was predicated" was added to the first sentence of 38 CFR 3.104(a). The purpose of this addition, as stated in the regulatory history, was to clarify the scope of the rule on finality of a decision by an agency of original jurisdiction. VA is proposing to amend the regulation on finality of decisions in order to provide an explanation of what "action" is required prior to a decision becoming final.

In a memorandum dated February 8, 1989, the VA General Counsel advised that the intent of the 1963 regulatory change was to provide that either notice to a claimant or authorization action be the controlling factors for determining whether a decision had become final and binding within the meaning of the regulation. The component parts required for notifications to claimants which are listed in 38 CFR 3.103(f) must be present for notifications to be accomplished within the meaning of 38 CFR 3.104(a)

The proposed amendment is intended to clarify that decisions do not become final until there has been written notification of the decisions to the claimants containing the elements listed in 38 CFR 3.103(f), or there has been payment of monetary benefits based on such decisions. We are also proposing to delete the references to part 19 of this title which are no longer applicable. In order to maintain consistency of language, we are also proposing to make a technical correction to the first sentence of 38 CFR 3.105(a) changing the phrase "determinations on which an action was predicated" to "determinations which are final and binding."

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: June 13, 1990.

Edward J. Derwinski,

Secretary of Veterans' Affairs.

38 CFR part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.104 paragraph (a) is revised to read as follows:

§ 3.104 Finality of decisions.

(a) A decision of a duly constituted rating agency or other agency of original jurisdiction shall be final and binding on all VA offices as to the conclusions based on evidence on file at the time the decision is made when written notification of such decision containing all elements prescribed in § 3.103(f) is sent to a claimant or beneficiary, or when such decision results in payment of monetary benefits. A final and binding agency decision shall not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105.

(Authority: 38 U.S.C. 210(c))

* * * * *

2. In § 3.105 the first sentence of paragraph (a) is revised to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(a) *Error.* Previous determinations which are final and binding, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. * * *

* * * * *

[FR Doc. 90–15849 Filed 7–9–90; 8:45 am]

BILLING CODE 6320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–3806–4]

Ocean Dumping; Proposed Cancellation of Site Designation, Key West, FL

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to cancel the designation of an ocean dumping site for the disposal of dredged material offshore Key West, Florida, which is currently designated by EPA on an interim basis. This proposed action is being taken because there is no clear future need for this site. The site will be removed from the list of "Approved Interim Dumping Sites" in 40 CFR 228.12(a)(3), which includes dredged material and non-dredged material ocean dumping sites.

DATES: Comments must be received by August 9, 1990.

COMMENTS: Send comments to: Mr. Robert B. Howard, U.S. Environmental Protection Agency/Region IV, Water Management Division, Water Quality Management Branch, Wetlands and Coastal Programs Section, Coastal Programs Unit, 345 Courtland Street NE, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Howard, 404/347–2126 or FTS 257–2126.

SUPPLEMENTARY INFORMATION: EPA published revised "Ocean Dumping Regulations and Criteria" in the Federal Register on January 11, 1977 (42 FR 2462 et seq.). Section 228.12 contains a list of "Approved Interim Dumping Sites" and "Approved Dumping Sites."

This list was amended on December 9, 1980 (45 FR 81042 et seq.) to extend the interim designation of some ocean dumping sites and cancel the designation of six industrial sites and one dredged material site. At that time, EPA stated its intention to identify additional ocean dumping sites for which there is no projected future need.

One such site offshore Key West, Florida, has now been identified, and EPA proposes to cancel the interim designation of this site based upon EPA's evaluation of information from the U.S. Army Corps of Engineers, Jacksonville District. According to the Jacksonville District, the site has never been used and there is no work, new or maintenance, envisaged for the Key West, Florida area. Any future dredging that may be required would be in the event of an emergency (e.g., hurricane). Such disposal of dredged material is best handled by the Corps of Engineers Section 103 Designation authority provided in the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended. The use of significant resources for studying, designating, monitoring and managing an EPA section 102 (MPRSA) ocean dumping site for the disposal of dredged material offshore Key West, Florida is presently unwarranted based upon the absence of any reasonably foreseeable need for ocean disposal of dredged material.

The purpose of this notice is to provide the public an opportunity to comment on the proposed cancellation of the Key West interim-designated ocean dumping site for the disposal of dredged material. The site with its identifying coordinates (based on North American Datum, 1927) is:

Key West, FL:
24°27'24" N., 81°45'38" W.
24°27'24" N., 81°44'32" W.
24°26'20" N., 81°44'32" W.
24°26'24" N., 81°45'38" W.

The cancellation of this site as an EPA interim-approved ocean dumping site is being published (per 40 CFR 228.11(a)) as a proposed rulemaking. Interested persons may participate in this proposed rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Under Executive Order 12291, EPA must judge whether a regulation is "major"

and therefore subject to the requirement of a Regulatory Impact Analysis.

EPA has determined that this proposed action will not have a significant impact on small entities. No small entities are using or, as far as EPA is aware, are planning to use this site in the near future. Furthermore, the cancellation of this site designation should have no effect on the economy or cause any of the other effects which would result in its being classified as a "major" action. Consequently, this proposed action does not necessitate the preparation of a Regulatory Flexibility Analysis or Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Approved by:

Joe R. Franzmathes,

Acting Regional Administrator.

In consideration of the foregoing, part 228 of title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Part 228 is proposed to be amended by removing from the list of "Approved Interim Dumping Sites," specifically the list of "Dredged Material Sites," in Section 228.12(a)(3) the following words and coordinates (based on North American Datum, 1927):

Key West:
24°27'24" N., 81°45'38" W.
24°27'24" N., 81°44'32" W.
24°26'20" N., 81°44'32" W.
24°26'20" N., 81°45'38" W.

[FR Doc. 90-16017 Filed 7-9-90; 8:45 am]
BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 641

Procedures for Implementing Executive Order 12114, Environmental Effects Abroad of Major Federal Actions

AGENCY: National Science Foundation.

ACTION: Proposed Rule.

SUMMARY: The National Science Foundation ("NSF") proposes to issue regulatory procedures for the United States Antarctic Program pursuant to Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 ("Executive Order"). The Executive Order requires Federal agencies to promulgate regulations that take into account environmental considerations when authorizing or approving major Federal actions outside the United States. The Executive Order is based on the President's independent authority; it furthers the purposes and policies of the National Environmental Policy Act (NEPA), the Antarctic Conservation Act, the Antarctic Treaty and its provisions, and other statutes and mandates consistent with the foreign and national security policies of the United States. Development of an effective environmental impact assessment program under the Executive Order will enable NSF to synchronize United States Antarctic Program operations with sound environmental practices, to prevent potential environmental harm by U.S. citizens, and to fulfill its statutory obligations under the Executive Order. Responsibilities of various units within the NSF and the United States Antarctic Program are set out in detail.

DATES: Comments must be received on or before August 9, 1990.

ADDRESSES: Interested persons may submit written comments to Lawrence Rudolph, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 1800 G Street NW., Washington, DC 20550, or hand deliver comments to the same address between the hours of 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, Assistant General Counsel, Office of the General Counsel, (202) 357-9435; or Dr. Sidney Draggan, Environmental Officer, Division of Polar Programs, (202) 357-7766, National Science Foundation, at the above address.

SUPPLEMENTARY INFORMATION: The Director of the National Science Foundation, or his designee, is responsible for enforcing the environmental assessment requirements set forth in Executive Order 12114 (January 4, 1979), entitled Environmental Effects Abroad of Major Federal Actions, 44 FR 1957. NSF manages and operates the national program in Antarctica, including research, logistics, and operational support from the U.S. Departments of Defense and Transportation and from civilian contractors. By this program, NSF provides an active and influential U.S. presence in the region. The principal expression of this presence is a balanced program of scientific research. This is the U.S. Antarctic Program (USAP). All work in support of USAP is subject to the Foundation's environmental policies and applicable law.

Antarctica is an unmatched natural laboratory for scientific research; in particular, for advancing humankind's understanding of global environmental processes. It has unique legal standing as well, since it is reserved by the Antarctic Treaty for peaceful purposes. Significantly, the Treaty provides a model of consensus on the importance of environmental protection.

Over its many years of existence, USAP operations have impacted the environment, particularly in its early years. These impacts have been highly localized, but still of concern. Numerous measures have been, and are being, taken to mitigate those impacts and those that might result from future activity. Of great importance among these measures is the assessment of potential environmental impacts associated with USAP operations. Such assessments, when fully incorporated into the planning process, are recognized as practical aids to environmentally-responsible decisionmaking.

The U.S. Antarctic Program has matured to the point of having a keen sense of values: The value of the nearly pristine nature of Antarctica's environment for its own sake; the value to humankind of the scientific research conducted on the Antarctic Continent; and, the value of the lives and health of the people working in the Antarctic. This sense of values has been most clearly expressed in the National Science Foundation's Special Initiative on Safety, Environment and Health in Antarctica. NSF implementation of Executive Order 12114 is a fundamental component of that initiative.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the rules primarily affect the internal procedures of a Federal Agency.

List of Subjects in 45 CFR Part 641

Administrative practice and procedure, Environment.

For the reasons set out in the preamble, it is proposed to amend title 45, chapter VI of the Code of Federal

Regulations, to add part 641 as set forth below.

Dated: July 2, 1990.

Sidney Draggan,

Environmental Officer, Division of Polar Programs, National Science Foundation.

Part 641 is added to read as follows:

PART 641—PROCEDURES FOR IMPLEMENTING EXECUTIVE ORDER 12114, ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS

Subpart A—General; United States Antarctic Program

Sec.

Subpart B—Environmental Review Process; United States Antarctic Program

Appendix A—Categorical Exclusions

Authority: 44 FR 1957 (Executive Order 12114), Jan. 4, 1979, 3 CFR, 1979, Comp. p. 356.

Subpart A—General; United States Antarctic Program

§ 641.10 Background.

(a) Executive Order 12114 (January 4, 1979), entitled Environmental Effects Abroad of Major Federal Actions, 44 FR 1957 (Executive Order) establishes policies and requirements for Federal agencies to be informed of relevant environmental considerations and to take such considerations into account when authorizing or approving actions encompassed by the Order which may have environmental effects outside the United States. The Executive Order is based on the President's independent authority; it furthers the purposes and policies of the National Environmental Policy Act (NEPA), the Antarctic Conservation Act, the Antarctic Treaty and its provisions, and other statutes and mandates consistent with the foreign and national security policies of the United States.

(b) The United States Antarctic Program (USAP) is the nation's program for scientific research and national presence in Antarctica. It is funded and managed by the Federal Government. The National Science Foundation (NSF) has overall funding and management (lead agency) responsibility for USAP and U.S. activities in Antarctica. NSF conducts detailed planning of logistics, and transmittal of logistics requirements to the Naval Support Force Antarctica, to the U.S. Coast Guard (primarily provision of icebreaker services), and to a civilian support contractor. NSF guides these support units in facilities management, design, planning, engineering, construction, and maintenance.

§ 641.11 Purpose.

These procedures are intended, in the context of Antarctic scientific and logistic operations, to provide policy guidance and to establish procedures to enable Responsible Officials of the NSF's Division of Polar Programs (DPP), managing the USAP, to implement the provisions of Executive Order 12114 on Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979 (44 FR 1957).

§ 641.12 Policy.

NSF's primary statutory function is to support basic scientific research. NSF's DPP has been charged with implementing this mandate relative to all U.S. scientific research conducted in Antarctica. It is the policy of the NSF to use all practicable means, consistent with national policy and its authority and available resources to carry out the objectives of the Executive Order and to ensure that environmental effects outside the U.S. are appropriately identified and considered in its decisions on proposed actions encompassed by the Executive Order.

§ 641.13 Applicability.

These procedures apply to decisions on major USAP actions that may significantly affect the quality of the Antarctic environment.

§ 641.14 Right of action.

These procedures are solely for the purpose of establishing internal procedures for the DPP and USAP to employ in considering potentially significant environmental effects in Antarctica covered by the Executive Order. Nothing in these procedures shall be construed to create a cause of action.

§ 641.15 Definitions.

As used in these procedures, the term:

(a) *Responsible Official* means the Assistant Director for Geosciences of the NSF or a designee principally responsible for the preparation of environmental action memoranda or environmental documents relating to a given DPP or USAP action governed by these regulations.

(b) *Environmental Action Memorandum* means a document to support internal NSF decisionmaking on environment-related matters.

(c) *Environmental Document* means an environmental review, an environmental impact assessment or an environmental impact statement.

(d) *Environment* means the natural, physical, and human environment of Antarctica and excludes economic and other environments; an action "significantly effects" the Antarctic environment if it does significant harm to that environment or to biotic or abiotic components or environmental processes of that environment.

Subpart B—Environmental Review Process; United States Antarctic Program

§ 641.20 Responsibilities of DPP and USAP officials.

As a general rule, responsibility for preparing environmental documents will follow NSF's, DPP's, and USAP's standard organization practices. The officials responsible for making decisions on proposed actions will be accountable for assuring that environmental documents are prepared in accordance with these procedures.

(a) DPP and USAP components having obligation for a given action are responsible for implementing these procedures and incorporating the environmental documents into their decisionmaking, and for:

(1) Identifying those of their actions with potential to significantly affect the Antarctic environment and assuring that necessary environmental review is undertaken and documentation is prepared.

(2) Coordinating and working with the NSF's Committee on Environmental Statements and Office of the General Counsel to implement these procedures.

(b) The Division of Polar Programs will be responsible for DPP's and USAP's implementation of Executive Order 12114 and these procedures, and for:

(1) Assisting other USAP components in implementing these procedures by providing policy and professional direction, guidance and scientific advice and assisting in furnishing budgetary resources and technical expertise for preparing environmental documentation.

(2) Ensuring the adequacy of environmental documents prepared and approving, as provided in these procedures, appropriate modifications in the contents, timing and availability of environmental documents.

(3) Establishing and maintaining working relationships with other national and international agencies, commissions, organizations and the public necessary to assist DPP and USAP in complying with these procedures.

(c) The NSF's Office of the General Counsel will be responsible for reviewing and concurring in the adequacy of DPP and USAP implementation of these procedures and for providing advice and assistance on the legal aspects of DPP's and USAP's implementation of these procedures.

(d) The NSF's Committee on Environmental Statements is comprised of representatives of NSF's organizational directorates and is responsible for assisting in the coordination of DPP's and USAP's implementation of these procedures.

§ 641.21 Review of Agency actions.

In reviewing proposed DPP or USAP actions for environmental effects in Antarctica the Responsible Official will use the following process. The Official shall initiate the environmental review process early and coordinate with other components of NSF, and USAP and appropriate national and international agencies, commissions, organizations and the public as may be necessary. Individuals with knowledge and experience relevant to the proposed action should be empaneled. It will not always, however, be necessary to employ a panel in the preparation of an environmental document.

(a) *Actions calling for environmental review.* Early in considering a possible major DPP or USAP action in Antarctica, the Responsible Official shall consider the action to determine if it is likely to cause significant environmental effects in Antarctica and thus may be subject to environmental review. An environmental action memorandum reflecting this consideration shall be made. The Official shall ensure that environmental action memoranda prepared for such actions properly reflect the environmental considerations in all cases. No written statement will be required in the case of actions which are "categorically excluded" under Subpart B, § 641.21(b)(2) (i)–(vii). The environmental action memorandum prepared should be considered along with political, economic, and other decisionmaking factors relating to the proposed action. The proposed action shall be reviewed initially to determine whether it falls into any of the four basic categories of actions and environmental effects abroad, described in section 2–3 of the Executive Order, which call for environmental review. These actions and effects are as follows:

(1) Major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nations (e.g., the oceans or Antarctica).

(2) Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action.

(3) Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(i) A product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(ii) A physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(4) Major Federal actions outside the United States, which significantly affect natural or ecological resources or processes of global importance designated for protection under section 2–3(d) of the Executive Order by the President, or, in the case of such a resource or process protected by international agreement binding on the United States, by the Secretary of State.

(b) *Actions excluded or exempted from review.* If the Responsible Official finds that the proposed action falls within the scope of paragraph (a) of this section the Responsible Official shall then determine whether it is categorically excluded or exempted from review under the procedures on any of the following grounds:

(1) *Actions normally categorically excluded from review.* The first category is that of actions normally excluded from environmental review under the Executive Order and these procedures. Such actions are those which as a class the NSF has determined are not likely to have significant adverse effects on the quality of the environment within the meaning of the Executive Order. If an action is categorically excluded, the Responsible Official need not conduct any further environmental review. Actions which have been categorically excluded are listed in Appendix A to this part. Additions or deletions from this list may be made by the Assistant Director for Geosciences, and shall become effective upon publication in the **Federal Register**. Even though an action may be categorically excluded from the need for environmental review, if information developed during the planning for the action indicates the possibility that the action may cause significant adverse environmental effects, the environmental effects of the action shall be reviewed to determine the need for the preparation of an environmental document.

(2) *Actions falling within Executive Order exemptions.* If the proposed action is not categorically excluded the Responsible Official shall evaluate it to determine if it falls under any of the exemptions outlined in sections 2–5 (a) and (c) of the Executive Order. Exemptions under paragraph (b)(2)(i) of this section are within the discretion of the Responsible Official and shall be employed only when there is no serious question of potential for significant environmental impact from the proposed action. Any environmental action memorandum shall reflect this determination. Even though an action may have been exempted under paragraph (b)(2)(i) of this section, if information developed during the planning for the action indicates the possibility that the action will cause significant environmental effects, the environmental effects of the action shall be reviewed to determine the need for preparation of an environmental document. The Responsible Official shall, with the concurrence of the NSF's Committee on Environmental Statements and Office of the General Counsel, note in the environmental action memorandum relating to a proposed action, or in a separate memorandum, any exemption of a proposed action from environmental review under paragraphs (b)(2) (iii) through (vii) of this section. Exemptions under paragraphs (b)(2) (iii) or (vii) of this section shall, in addition, require the approval of the Assistant Director for Geosciences. In utilizing exemptions under paragraph (b)(2)(vii) of this section, the NSF shall, as soon as feasible, consult with the Council on Environmental Quality. The exemptions are as follows:

(i) Actions not having a significant effect on the environment outside the United States as determined by the NSF.

(ii) Actions taken by the President.

(iii) Actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of armed conflict.

(iv) Export or import licenses or permits or export or import approvals.

(v) Votes and other actions in international conferences and organizations.

(vi) Disaster and emergency relief action.

(vii) Actions that may be necessary to meet emergency circumstances or situations involving exceptional foreign policy and national security sensitivities and other such special circumstances.

(c) *Review for potentially significant environmental effects abroad.* If the proposed action falls within the scope of Subpart B, § 641.21(a), and is not excluded or exempted from environmental review under Subpart B, § 641.21 (b), the Responsible Official shall review it to determine if the action will cause a significant effect on the environment of the global commons, any other area outside the jurisdiction of any nation, or a foreign nation. The Responsible Official shall make a review concurrently with the general planning and review of the proposed action. In reviewing for potential effects abroad the Responsible Official should consider potential direct effects on the natural and physical environment, including soil, air, water and natural resources and processes, which may be caused by the action and occur at the same time and place. He should also consider reasonably foreseeable significant indirect effects on the natural physical environment potentially caused by the action but occurring later in time. In reviewing for significance of the potential effects on the environment the Responsible Official should consider whether the action:

(1) Adversely affects public health and safety through the environment;

(2) Has highly uncertain environmental effects;

(3) Involves unique or unknown environmental risks; or,

(4) Together with other actions the effects of any one of which are individually insignificant, will have cumulatively significant environmental effects.

(d) *Actions without potentially significant environmental effects.* If, having made a preliminary analysis (or environmental impact assessment) for significant effects, the Responsible Official concludes that the proposed action is not expected to cause significant harmful environmental effects within the meaning of Subpart A, § 641.15(d), the Responsible Official shall with concurrence of the NSF's Committee on Environmental Statements and Office of the General Counsel so state in an addendum to the environmental action memorandum (or in the Finding of the environmental impact assessment) or in a separate memorandum. No further environmental review of the action will then be necessary.

(e) *Actions with potentially significant environmental effects.* If, having made a preliminary analysis (or environmental impact assessment) for significant effects, the Responsible Official concludes that the proposed action will cause significant environmental effects within the meaning of Subpart A, § 641.15(d), the Responsible Official shall prepare an environmental document—an environmental impact statement, a concise environmental review or a bilateral and multilateral study, as appropriate—in accordance with section 2-4 of the Executive Order and Subpart B, § 641.22(c), of these procedures. The Responsible Official shall with concurrence of the NSF's Committee on Environmental Statements and Office of the General Counsel state the conclusions of any such environmental document in an addendum to the environmental action memorandum or a separate memorandum, and shall attach the environmental document to the environmental action memorandum. The Responsible Official shall ensure that the environmental document is prepared as early as feasible and to the extent possible concurrently with other relating to the proposed action.

§ 641.22 Preparing the environmental document.

(a) *Coordinating preparation.* When it is determined that an environmental document is to be prepared, the Responsible Official shall inform the NSF's Committee on Environmental Statements and Office of the General Counsel and shall cooperate with them and other entities, as necessary, to prepare the document. To avoid duplication of effort and to gain maximum relevant expertise in the preparation of environmental reviews, the Responsible Official should, where appropriate, encourage the participation of other entities having relevant environmental jurisdiction or expertise, and as necessary, private individuals in the preparation of environmental documents under these procedures. Early efforts will be made by DPP to determine which component of USAP should serve as lead in preparation of an environmental document. In making this decision, the magnitude, duration and sequence of USAP component involvement, and the amount of expertise concerning the actions environmental effects will be considered.

(b) *Planning the preparation of the environmental document.* When it is decided which component of USAP will prepare the environmental document, the Responsible Official, with the cooperation of the NSF's Committee on Environmental Statements and Office of the General Counsel, shall conduct an early meeting to define the significant considerations and issues that should be addressed in the environmental document.

(c) *Content of the environmental document.* The format and content of each document must be appropriate to the action under consideration. The significant adverse environmental effects of actions described in Subpart B, § 641.21(a)(1) of these procedures shall be reviewed through preparation of environmental impact assessments; or, if necessary, environmental impact statements. The significant adverse environmental effects of actions described in subparts B, § 641.21(a) (2), (3), and (4) may be reviewed either through preparation of a concise environmental review, or an environmental impact assessment, both of which may be bilateral or multilateral in nature.

(1) *Environmental impact statement.* If it is determined (from the Finding of an environmental impact assessment) that an environmental impact statement shall be prepared, the Responsible Official shall to the extent possible and consistent with these procedures, follow the procedures for preparing such statements contained in NSF's regulations for implementing the NEPA (45 CFR part 640). Such statements will be concise and analytical so as to permit an informed consideration of the significant environmental effects of the proposed action and the reasonable alternatives. If an environmental impact statement (inluding a generic or programmatic statement) has been prepared involving analysis of environmental effects or issues directly relevant to the effects or issues involved in the proposed action, a new environmental impact statement need not be prepared under these procedures.

(2) *Bilateral or multilateral environmental studies.* A bilateral or multilateral environmental study is a study by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant. To be used for the puposes of these procedures the study should deal with the environmental issues of the proposed action being considered. While the exact content of the document may vary, the study should normally include a biref discussion of the action proposed and of the anticipated environmental impacts as well as possible measure that could be taken to mitigate harmful environmental effects.

(3) *Concise environmental review.* A concise environmental review considers

the key environmental issues and effects involved in an action. The review shall be prepared by the Responsible Official in cooperation with other NSF and USAP components, and, as necessary and appropriate, other Federal agencies. The review may be prepared in any format useful for facilitating planning and decisionmaking (e.g., from deliberations of an expert panel). If an environmental review or bilateral or multilateral environmental study (including a generic or programmatic review or study) has been prepared involving analysis of environmental effects or issues directly relevant to the effects or issues involved in the proposed action, a new environmental review or study of the proposed action need not be prepared under these procedures.

(d) *Modifications of environmental documents.* In order to ensure the proper and efficient conduct of the USAP, modifications in the contents, timing, and availability to other Federal agencies and national and international organizations of environmental documents prepared in accordance with these procedures may be made to:

(1) Enable the NSF to decide and act promptly as and when required;

(2) Avoid adverse impacts on treaty obligations, foreign relations, or infringement in fact or appearance of other nations sovereign responsibilities; or

(3) Ensure appropriate reflection of:

(i) Diplomatic factors;

(ii) Needs for governmental or commercial confidentiality;

(iii) National security considerations;

(iv) Difficulties in obtaining information and DPP's or USAP's ability to analye meaningfully environmental effects of a proposed action; and

(v) The degree to which NSF, DPP, or USAP are involved in or able to affect a decision to be made.

Such modifications may be made only with concurrence of NSF's Office of the General Counsel.

(e) *Revisions and supplementing of environmental documents.* The Responsible Official should revise or supplement an environmental document if before the final decision is taken on the proposed action there is a substantial change in the proposed action which may have significant environmental effects or if there are significant new circumstances or information relevant to the environmental effects which may have bearing on the proposed action.

(f) *Obtaining outside technical assistance.* Qualified technical personnel from Federal agencies or outside contractors may be used to assist the NSF in preparing environmental documents as called for under these procedures.

(g) *Generic and programmatic environmental documents.* Before preparing an environmental document under these procedures the Responsible Official should enquire from the NSF's Committee on Environmental Statements, or other Federal agencies, if a generic or programmatic environmental document exists analyzing similar actions, effects, or issues. If a generic or programmatic document exists and if it deals with relevant similarities in the action it may not be necessary to prepare further environmental documentation. In preparing environmental documents on a specific action, the Responsible Official should consider the advisability of modifying or expanding the documents so they may serve as generic or programmatic documents for a broader range of actions.

§ 641.23 Use of the environmental document in DPP and USAP decisionmaking.

Officials responsible for decisionmaking on a particular action shall ensure that the environmental documentation called for in these procedures is prepared early in the decisionmaking process where, together with other factors, it will be most valuable in formulating, reviewing and deciding upon proposals for DPP and USAP action.

§ 641.24 Notification of the availability of environmental documents.

Environmental impact assessments and environmental reviews as such are public documents. Their availability, however, need not be subject to notification. Environmental impact statements are subject to notification of availability in the **Federal Register.**

Appendix A—Categorical Exclusions

The U.S. Antarctic Program's (USAP) Programmatic Environmental Impact Statement covers activities conducted by the USAP, including:

- Transportation via ship, airplane, helicopter or surface vehicle;
- Construction involving interior remodelling and renovation of permanent and temporary facilities within existing stations, field camps, and bases;
- Fuel handling and storage within existing stations;
- Accidental discharge of oil or hazardous substances or materials; and
- Scientific research activities involving the:

—Low volume collection of biological specimens.
—Low volume collection of geologic specimens.
—Small-scale detonation of explosives.
—Use of weather/research balloons, research rockets, and automatic weather stations that are planned to be retrieved.
—Use of radioisotopes in scientific experiments.

Scientific research activities involving ocean drilling are subject to environmental impact evaluation by the Joint Oceanographic Institutions for Deep Earth Sampling Pollution Prevention and Safety Panel.

Any other type of activity which is proposed under USAP and which is not described in the USAP Programmatic Environmental Impact Statement will require at least an environmental impact assessment as required under 45 CFR 640.3(b) of NSF's regulations implementing NEPA.

[FR Doc. 90-15731 Filed 7-9-90; 8:45 am]
BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-325; RM-7212, RM-7347]

Radio Broadcasting Services; Americus, Fort Valley, and Smithville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed petitions. The first petition, filed by S & M Broadcasters, Inc., permittee of Station WKXK(FM), Channel 250A at Fort Valley, Georgia, proposes the substitution of Channel 250C3 for Channel 250A at Fort Valley and modification of its construction permit for Station WKXK(FM) to specify the higher class channel. The upgrade at Fort Valley requires the substitution of Channel 254A for Channel 249A at Americus, Georgia, and modification of Station WPUR(FM)'s license to specify operation on Channel 254A. The second petition, filed by Smithville Radio Company, proposes the allotment of Channel 254C3 to Smithville as the community's first local broadcast service. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest for use of Channel 250C3 at Fort Valley or require the proponent to demonstrate the availability of an additional equivalent channel for use by other interested parties. We are also issuing an *Order to Show Cause* to Sumter Broadcasting Co., Inc., licensee of

Station WPUR(FM), Channel 249A, Americus, Georgia, seeking comments as the why its license should not be modified to specify operation on Channel 254A. The coordinates for Channel 250C3 at Fort Valley are North Latitude 32–33–20 and West Longitude 83–44–14. The coordinates for Channel 254A at Americus are North Latitude 32–04–51 and West Longitude 84–15–20. The coordinates for Channel 254C3 at Smithville are North Latitude 31–56–23 and West Longitude 84–15–37.

DATES: Comments must be filed on or before August 24, 1990, and reply comments on or before September 10, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: Julian P. Freret, Booth, Freret & Imlay, 1920 N Street NW., Suite 150, Washington, DC 20036 (Counsel for S & M Broadcasters, Inc.); Jerry E. White & Cindy M. White, D/B/A Smithville Radio Company, Rt. 2, Box 27F, Meigs, Georgia 31765 (Petitioners for Smithville, Georgia).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–325, adopted June 20, 1990, and released July 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–16028 Filed 7–9–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–326, RM–7179]

Radio Broadcasting Services; Brunswick and Waycross, GA

AGENCY: Federal Communications Commmission.

ACTION: Proposal rule.

SUMMARY: This document requests comments on a petition by Rowland Radio, Inc., licensee of Station WBGA(FM), Channel 273C1, Waycross, Georgia, seeking to change the community of license for Channel 273C1 from Waycross to Brunswick, Georgia, and to modify its license accordingly. Since this proposed allotment would result in the smaller community of Brunswick having six local radio stations and the larger community of Waycross having five local radio stations, the petitioner has been asked to submit information showing how its proposal would result in a preferential arrangement of FM allotments. The coordinates for Channel 273C1 at Brunswick, Georgia, are North Latitude 31–09–13 and West Longitude 81–58–00.

DATES: Comments must be filed on or before August 24, 1990, and reply comments on or before September 10, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006, (Attorney for Rowland Radio, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–326, adopted June 20, 1990, and released July 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decisions may also be purchased from the Commission's copy contractros, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington DC 20037.

Provisions of the Regulatory Flexibilty Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–16029 Filed 7–9–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–321, RM–7303]

Radio Broadcasting Services; Paragould and Lake City, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of North Arkansas Radio Co., Inc., licensee of Station KDXY(FM), Channel 285A, Paragould, Arkansas, seeking the reallotment of Channel 285A to Lake City, Arkansas, as a Class C3 channel, and modification of its license accordingly. Coordinates for this proposal are 35–51–30 and 90–34–30.

DATES: Comments must be filed on or before August 24, 1990, and reply comments on or before September 10, 1990.

ADDRESSES: Federal Communcations Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Eugene T. Smith, Esp., 715 G Street SE., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–321, adopted June 18, 1990, and

released July 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–16027 Filed 7–9–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–324; RM–7314]

Radio Broadcasting Services; Saranac Lake, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Thomas G. Davis, seeking the allotment of Channel 292C3 to Saranac Lake, New York, as the community's second local FM service. Channel 292C3 can be allotted to Saranac Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.2 kilometers (11.3 miles) southeast to avoid a short-spacing to the proposed allotment of Channel 293A to Cornwall, Ontario, Canada. The coordinates for this allotment are North Latitude 44–11–40 and West Longitude 74–00–18. Canadian concurrence is required since Saranac Lake is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before August 24, 1990, and reply comments on or before September 10, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Esq., Kaye, Scholer, Fierman, Hays & Handler, The McPherson Building, 901 15th Street NW., suite 1100, Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–324, adopted June 20, 1990, and released July 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–16030 Filed 7–9–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–322, RM–7183]

Television Broadcasting Services; Wilmington, NC, Norfolk-Portsmouth-Newport News-Hampton, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Wilmington Minority Broadcasters to allot VHF Television Channel 10+ to Wilmington, North Carolina, as its fourth local commercial service. Channel 10+ can be allotted to Wilmington in compliance with the Commission's minimum distance separation requirements with a site restriction of 50.1 kilometers (31.1 miles) northeast. The coordinates for this allotment are North Latitude 34–29–15 and West Longitude 77–28–15. The allotment also requires that the license of Station WAVY, Channel 10, Norfolk-Portsmouth-Newport News-Hampton, Virginia, be modified to specify a minus offset instead of its present plus offset. Therefore, an Order to Show Cause has been issued to WAVY Television, Inc., licensee of Station WAVY, as to why its license should not be modified to specify operation on Channel 10– instead of its present Channel 10+.

DATES: Comments must be filed on or before August 24, 1990, and reply comments on or before September 10, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Vincent J. Curtis, Jr., Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036–2679 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 90–322, adopted June 18, 1990, and released July 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-16031 Filed 7-9-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 87

[PR Docket No. 90-315; FCC 90-235]

Aviation Services; Establishment of Technical Standards and Licensing Procedures for Aircraft Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has proposed to adopt rules that establish technical standards for aircraft earth stations and attendant licensing procedures. Aircraft earth stations are the mobile radios aboard aircraft which operate in the Aeronautical Mobile-Satellite Service. The Aeronautical Mobile-Satellite Service (AMSS) is one of the services that comprise the domestic generic Mobile Satellite Service (MSS).

DATES: Comments are due by September 12, 1990 and reply comments by October 29, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rudolfo Lujan Baca, Office of International Communications, (202) 632-0935.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, adopted June 14, 1990, and released July 3, 1990. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased form the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Commission has proposed amending its rules to establish technical standards and licensing procedures for aircraft earth stations. Specifically, the Commission has proposed to adopt technical standards and corollary licensing procedures for aircraft mobile terminals used for Mobile Satellite Service (MSS) communications. The proposals will implement previous Commission "L-band" proceedings allocating spectrum and establishing initial licensing parameters to provide for the MSS.

2. The Commission is proposing technical standards for the aircraft earth stations in five areas: output power, modulation, authorized bandwidth, emission limits and frequency stability. In addition to technical standards, the Commission has also proposed changing its rules concerning licensing of aircraft earth stations. These changes should foster the rapid introduction of mobile aircraft earth station terminals for use in the newly approved satellite communications system provided for at L-band.

Initial Regulatory Flexibility Analysis

Reason for Action

3. In this proceeding, we seek public comment on various aspects of the Commission's proposals to amend part 87 of the Rules governing technical standards applicable to aircraft earth stations to establish standards for equipment capable of using satellite technology.

Objective

4. The purpose of the proposed amendments is to ensure, to the extend possible, compatibility of equipment among the various uses of shared L-band spectrum in an effort to mitigate potential radio interference.

Legal Basis

5. The proposed action is authorized under sections 4(i), 303(e), 303(f), 303(r) and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(e), 303(f), 303(r) and 332(a), respectively.

Regulatory Flexibility Act Certification

6. In accordance with section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, the Commission certifies that these rules would not have a significant impact upon a substantial number of small entities because these entities generally are not involved in the operation of aircraft earth stations. The heavy capital investment required to develop, manufacture, launch, install, and maintain an aeronautical mobile satellite communications system generally precludes small business entities from participating in this industry.

Procedural Matters

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and found to increase the information collection burden upon the public. This proposed increase is subject to approval by the Office of Management and Budget as prescribed by the Act. The affected members of the public, however, are limited because the number of satellite equipment manufacturers, system operators and aircraft licensees likely to utilize this equipment is proportionately small.

8. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for rules governing permissible *ex parte* contacts.

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 12, 1990 and reply comments on or before October 29, 1990. All relevant and timely comments will be considered by the Commission before taking final action in this proceeding. The proposal may have impact on both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. Therefore, pursuant to the 1989 Canada-United States Trade Agreement (Pub.L. 100-449, 102 Stat. 1851) the Commission will provide a seventy-five day comment period.

List of Subjects in 47 CFR Part 87

Communications equipment, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

Part 87 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 87—[AMENDED]

1. The authority citation for part 87 continues to read:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. In § 87.5, the following definitions for "Aeronautical Mobile-Satellite

Service" and "Aircraft Earth Station" are proposed to be added, in alphabetical order, to read as follows:

§ 87.5 Definitions.

* * * * *

Aeronautical mobile-satellite service. A mobile-satellite service in which mobile earth stations are located on board aircraft; survival craft stations and emergency position indicating radiobeacon stations may also participate in this service.

* * * * *

Aircraft earth station. A mobile earth station in the aeronautical mobile-satellite service located on board an aircraft.

* * * * *

3. A new § 87.51 is proposed to be added to read as follows:

§ 87.51 Aircraft earth station commissioning.

(a) In cases where an aircraft earth station is required to be commissioned to use a privately owned satellite system, FCC Form 404 must be submitted to the Commission prior to transmission on any of the satellite frequency bands allocated for aeronautical mobile-satellite communications.

(b) An aircraft earth station authorized to operate in the INMARSAT space segment must display the Commission license in conjunction with the commissioning certificate issued by the INMARSAT Organization. Notwithstanding the requirements of this paragraph, aircraft earth stations can operate in the INMARSAT space segment without an INMARSAT issued commissioning certificate provided an appropriate written approval is obtained from the INMARSAT Organization in addition to the license from the Commission.

4. In § 87.131, the table is proposed to be amended by removing the word "(Communication)" after the entry "Aircraft" under the heading "Class of station", and adding a new entry "Aircraft Earth" under the heading "Class of station" before the entry for radionavigation, and by adding new footnotes 8 and 9 to read as follows:

§ 87.131 Power and emissions.

* * * * *

Class of station	Frequency band/ frequency	Authorized emission(s)	Maximum power [1]
*	*	*	*
Aircraft	Aeronautical frequencies		
*	*	*	*
	Marine frequencies		
*	*	*	*
Aircraft earth.	UHF.....	G1D, G1E, G1W [8].	60 watts [9]
Radio-navigation.	(*).....	(*).....	(*)
*	*	*	*

[8] Other emissions will be considered upon a showing of need.

[9] Power shall not exceed 60 watts per carrier. The maximum EIRP shall not exceed 2000 watts per carrier. Maximum rated power of the transmitter in excess of 60 watts, and the corresponding increase in EIRP, will be considered upon a showing of need.

5. In § 87.133(a), the table is proposed to be amended at (7) by adding a new entry, "Aircraft earth station", between the listings for "Aircraft stations and "Radionavigation stations," and a new footnote 10 to read as follows:

§ 87.133 Frequency stability.

(a) * * *

Frequency band (lower limit exclusive, upper limit inclusive) and categories of stations	Tolerance [1]	Tolerance [2]
*	*	*
(7) Band–470 to 2450 MHz:		
*	*	*
Aircraft stations.....	(*)	(*)
Aircraft earth station.....		[10] 0.2
Radionavigation stations:		
*	*	*
*	*	*
*	*	*
*	*	*

[10] This tolerance is the maximum error, exclusive of Doppler effect, that the aircraft earth station (AES) is permitted to contribute to the transmitted signal. For purposes of type acceptance, a tolerance of 0.1 shall apply to the reference oscillator of the AES transmitter.

6. In § 87.137(a), the table is proposed to be amended by adding new entries, "G1D, G1E, and G1W between the existing entries "F9D" and G3E [6]", and by adding a new Footnote 16 to read as follows:

§ 87.137(a) Types of emission.

(a) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz)		
		Below 50 MHz	Above 50 MHz	Frequency deviation
*	*	*	*	*
F9D.....	(*).....		(*)	.....
G1D [16].....	21K0G1D.....		25	.....
G1E [16].....	21K0G1E.....		25	.....
G1W [16].....	21K0G1W.....		25	.....
G3E [6].....	(*).....		(*)	(*)
*	*	*	*	*

[16] Authorized for use at aircraft earth stations. Lower values of necessary and authorized bandwidth are permitted. Other emissions and bandwidths will be considered upon a showing of need.

7. In § 87.139, a new paragraph (h) is proposed to be added to read as follows:

§ 87.139 Emission limitations.

* * * * *

(h) When using G1D, G1E, or G1W emissions in the 1645.5–1660.5 MHz frequency band with a maximum authorized bandwidth of 25 kHz, the emissions must be attenuated as shown below.

(1) At full output power, while transmitting an unmodulated single carrier, the composite spurious and noise output shall be attenuated below the mean power of the transmitter, pY, by at least:

Frequency (MHz)	Attenuation(dB)*
0–1559.....	$67+10\log_{10} pY$
1557–18,000.....	$39+10\log_{10} pY$

*—These values are expressed in dB below the carrier measured in a 4 kHz bandwidth.

(2) For transmitters rated at 60 watts or less: When transmitting two carriers, each 3 dB below the rated power, the

mean power of any intermodulation products must be at least 25 dB below the mean power of either carrier.

(3) For transmitters rated at greater than 60 watts: When transmitting two carriers, each 3 dB below the rated power, the mean power of any intermodulation products must be at least $.10.3+10 \log_{10} pY$ below the mean power of either carrier.

(4) The transmitter emission limit is a function of the modulation type and bit rate (BR). BR is in bits per second (bps).

(5) Binary Phase Shift Keying (BPSK) shall be employed when using a bit rate of 2400 or less. Emissions shall be in accordance with the following table:

Frequency Offset (Hz) Equal to or Greater Than:	Attenuation [1]
±0.625×BR	0
±1.40×BR	−20
±2.80×BR	−40
±35,000	(*)

[1] dB Relative to the Maximum Level of the Emission.

*— Emissions are measured in a 4 kHz band and shall be at least 55 dB below the level of the unmodulated carrier.

(6) Quarternary Phase Shift Keying (QPSK) shall be employed when using a bit rate greater than 2400. Emission shall be in accordance with the following table:

Frequency Offset (Hz) Equal to or Greater Than:	Attenuation [1]
±0.375×BR	0
±0.70×BR	−20
±1.40×BR	−40
±Fm*	**

[1] dB Relative to the Maximum Level of the Emission.

*—For bit rates below 10,000 bps, Fm=35,000 Hz. For bit rates of 10,000 bps and above, Fm=4 x bit rate.

**Emissions are measured in a 4 kHz band and shall be at least 55 dB below the level of the unmodulated carrier.

(7) Emission limits for other types of modulation will be considered upon a showing of need.

8. In § 87.141, a new paragraph (j) is proposed to be added to read as follows:

§ 87.141 Modulation requirements.

* * * * *

(j) Transmitters used at Aircraft Earth Stations shall employ BPSK for low rate data (up to and including 2400 bits per second) and QPSK for higher rate data. Other types of modulation will be considered upon a showing of need.

9. In § 87.145, paragraph (b) is proposed to be revised to read as follows:

§ 87.145 Acceptability of transmitters for licensing.

* * * * *

(b) Each transmitter must be type accepted for use in these services, except as listed in paragraph (d) of this section. Aircraft stations which transmit on maritime mobile frequencies must use transmitters authorized for use in ship stations in accordance with part 80 of this chapter.

* * * * *

10. In § 87.147, paragraph (c)(3) is proposed to be revised to read as follows:

§ 87.147 Type acceptance of equipment.

* * * * *

(c) * * *

(3) The frequency bands are as follows: 74.8 MHz to 75.2 MHz; 108.000 MHz to 136.000 MHz; 328.600 MHz to 335.400 MHz; 960.000 MHz to 1215.000 MHz; 1559.000 to 1626.5 MHz; 1646.5 to 1660.500 MHz; 5000.000 MHz to 5250.000 MHz; 14.000 GHz to 14.400 GHz; 15.400 GHz to 15.700 GHz; 24.250 GHz to 25.250 GHz; and 31.800 GHz to 33.400 GHz.

* * * * *

§ 87.171 [Amended]

11. In § 87.171, the following symbol and class of station are proposed to be added, in alphabetical order, "TJ— Aircraft earth station in the aeronautical mobile-satellite service".

12. In § 87.173, the frequency table in paragraph (b) is proposed to be amended by adding the following frequency band: "1646.5–1660.5 MHz" to read as follows:

§ 87.173 Frequencies.

* * * * *

(b) Frequency table:

Frequency or frequency band	Subpart	Class of Station	Remarks
1559–1626.5	*	*	*
1646.5–1660.5 MHz	J	TJ	Aeronautical Mobile-Satellite (R)

* * * * *

13. In § 87.185, paragraphs (b) and (c) are proposed to be revised and new paragraph (d) is proposed to be added to read as follows:

§ 87.185 Scope of service.

* * * * *

(b) Aircraft public correspondence must make service available to all persons without discrimination and on reasonable demand, and must communicate without discrimination with any public coast station or mobile-satellite earth station authorized to provide aircraft public correspondence service.

(c) Aircraft public correspondence service on maritime mobile frequencies may be carried on only by aircraft stations licensed to use maritime mobile frequencies, and must follow the rules for public correspondence in Part 80.

(d) Aircraft public correspondence service on aeronautical mobile-satellite (R) frequencies may be carried on only aircraft earth stations licensed to use aeronautical mobile-satellite (R) frequencies and must follow the rules for public correspondence in this Part. Aircraft public correspondence service on maritime-mobile satellite frequencies may be carried on only aircraft earth stqations licensed to use maritime mobile-satellite frequencies, and must follow the rules for public correspondence in this Part.

14. In § 87.187 is proposed to be amended by redesignating paragraphs (p) through (z) as paragraphs (q) through (aa), and adding a new paragraph (p) to read as follows:

§ 87.187 Frequencies.

* * * * *

(p) The frequencies in the band 1545.000–1559.000 MHz and 1646.500–1660.500 MHz are authorized for use by the aeronautical mobile-satellite (R) service. The use of the bands 1544–1545 MHz (space-to-Earth) and 1645.5–1646.5 MHz (Earth-to-space) by the mobile-satellite service is limited to distress and safety operations. In the frequency bands 1549.5–1558.5 MHz and 1651–1660 MHz, the Aeronautical Mobile-Satellite (R) requirements that cannot be accommodated in the 1545–1549.5 MHz, 1558.5–1559 MHz, 1646.5–1651 MHz and 1660–1660.5 MHz bands shall have

priority access with real-time preemptive capability for communications in the mobile-satellite service. Systems not interoperable with the aeronautical mobile-satellite (R) service shall operate on a secondary basis. Account shall be taken of the priority of safety-related communications in the mobile-satellite service.

* * * * *

15. Section 87.189 is proposed to be amended by revising paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (c) through (e), adding new paragraph (b) and revising redesignated paragraph (d) to read as follows:

§ 87.189 Requirements for public correspondence equipment and operations.

(a) Transmitters used for public correspondence by aircraft stations in the maritime mobile frequency bands must be authorized by the Commission in conformity with Part 80 of this chapter.

(b) Transmitters used for public correspondence by aircraft earth stations in aeronautical mobile-satellite (R) or maritime-mobile satellite frequencies must be type accepted by the Commission in conformity with this Part. Aircraft earth stations that are required to be commissioned to use a privately owned satellite system also must meet the provisions in § 87.51.

* * * * *

(d) All communications of stations in the aeronautical mobile or aeronautical mobile-satellite (R) service have priority over public correspondence.

* * * * *

[FR Doc. 90-15842 Filed 7-9-90; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 516, 517 and 552

[GSAR Notice No. 5-285]

General Services Administration Acquisition Regulation; Economic Price Adjustment Clause for Federal Supply Service

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would add a paragraph to section 516.203-4 to prescribe Economic Price Adjustment clauses based on the Producer Price Indexes (PPI) for stock and special order program contracts; to add section 517.208 to prescribe an Evaluation of Options provision for stock and special order program contracts that include options to extend the term of the contract and to provide for economic price adjustments based on the PPI; to add section 552.216-72 to provide the text of the Economic Price Adjustment—Stock and Special Order Program Contracts clause and alternates; and to add section 552.217-70 to provide the text of the Evaluation of Options provision.

DATES: Comments are due in writing on or before August 9, 1990.

ADDRESSES: Comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th & F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from executive Order 12291. The exemption applies to this proposed rule.

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), since it merely extends a pricing adjustment mechanism used in multiyear contracts to contracts with options to extend the period of contract performance. Small businesses, comprising a majority of the contractors in the stock and special order programs, have not objected to the current mechanism in multiyear contracts. An Initial Regulatory Flexibility Analysis, therefore, has not been prepared. However, comments from small businesses and other interested parties are invited and will be considered in accordance with section 610 of the Regulatory Flexibility Act. This proposed rule does not contain information collection requirements that require that approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 516, 517 and 552

Government procurement.

1. The authority citation for 48 CFR parts 516, 517 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 516—[AMENDED]

2. Section 516.203-4 is amended by adding paragraph (c) to read as follows:

516.203-4 Contract clauses.

* * * * *

(c) In FSS stock or special order program procurements, the contacting director will determine whether to use an economic price adjustment clause based on the Producer Price Indexes (PPI) in multi-year contracts or in contracts that include options to extend the term of the contract. The historical price stability of the item to be procured and the adequacy of the PPI as the control for contract pricing will be considered in making this determination. When authorized by the contracting director, the contracting officer shall include the clause at 552.216-72 in multi-year indefinite-delivery solicitations and contracts for stock or special order program items. If the contract includes one or more options to extend the term of the contract, the contracting officer shall use the clause with its Alternate I. If a multi-year contract with additional option periods is contemplated, the contracting officer may use a clause substantially the same as the clause at 552.216-72 with its Alternate I suitably modified. If the contract requires a minimum adjustment before the price adjustment mechanism is effectuated, the contracting officer shall use the basic clause or the Alternate I clause along with Alternate II.

PART 517—[AMENDED]

3. Section 517.208 is added to read as follows:

517.208 Solicitation provisions and contract clauses.

The Contracting Officer shall insert a provision substantially the same as the provision at 552.217-70, Evaluation of Options, in soliciations for procurements under the Federal Supply Service (FSS) stock or special order program when:

(a) The solicitation contains an option to extend the term of the contract,

(b) A firm-fixed price contract with economic price adjustment base on the Producer Price Indexes is contemplated, and

(c) A determination has been made as specified in 516.203-4(c).

PART 552—[AMENDED]

4. Section 552.216-72 is added to read as follows:

552.216-72 Economic Price Adjustment—Stock and Special Order Program Contracts.

As prescribed in 516.203-4(c), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—STOCK AND SPECIAL ORDER PROGRAM CONTRACTS (XXX 1990)

(a) "Producer Price Index" (PPI), as used in this clause, means the originally released index, not seasonally adjusted, published by the Bureau of Labor Statistics, U.S. Department of Commerce (Commerce) product code _____ found under Table

(b) During the term of the contract, the award price may be adjusted once upward or downward a maximum of _____* percent. Any price adjustment for the product code shall be based upon the percentage change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released 12 months later (the updated index). The formula for determining the Adjusted Contract Price (ACP) applicable to shipments for the balance of the contract period is—

$$ACP = \frac{\text{Updated Index}}{\text{Base Index}} \times \text{Award Price}$$

(c) If the PPI is not available for the month of the base index or the updated index, the month with the most recently published PPI prior to the month determining the base index or updated index shall be used.

(d) If a product code is discontinued, the Government and the Contractor will mutually agree to substitute a similar product code. If Commerce designates an index with a new title and/or code number as continuous with the product code specified above, the new index shall be used.

(e)(1) A request for a price adjustment resulting from application of the formula in (b) above must be submitted in writing by the Contractor to the Contracting Officer, or to the Administrative Contracting Officer (ACO) if this contract is delegated for contract administration, no later than the end of the thirteenth month of the contract period.

(2) Alternatively, the Contracting Officer or ACO, if applicable, may unilaterally adjust the award price downward when appropriate under (b) above.

(f) Price adjustments shall be effective upon execution of a contract modification by the Government or on the first day of the second year of the contract, whichever is later, shall indicate the updated index and percent of change as well as the ACP, and shall not apply to purchase orders issued before the effective date.

(End of Clause)

Alternate I (XXX 1990). As prescribed in 516.203-4(c), substitute the following paragraphs (b) and (e) for paragraphs (b) and (f) of the basic clause and delete paragraph (e) of the basic clause:

(b) In any option period, the contract price may be adjusted upward or downward a maximum of _____* percent.

(1) For the first option period, the price adjustment will be computed based on the change in the PPI released in the month prior to the initial month of the contract period specified in the solicitation for sealed bidding or the month prior to award in negotiation (the base index) and the PPI released in the third month before completion of the initial contract period (the updated index), expressed as a percentage.

(2) For any subsequent option period, the price adjustment shall be the percentage change in the PPI released 12 months after the previous updated index.

(e) Price adjustments shall be effective upon execution of a contract modification by the Government indicating the most recent updated index and percent of change, as well as the contract price applicable to shipments under the option period, and shall not apply to purchase orders issued before the effective date.

Alternate II (XXX 1990). As prescribed in 516.203-4(c), add the following paragraph (g) in the basic clause. When the paragraph is used with Alternate I, the paragraph shall be designated paragraph (f).

(g) No price adjustment will be made unless the percentage change in the PPI is at least _____** percent.

*The appropriate percentage should be determined based upon the historical trend in the PPI for the product code. A ceiling of more than 10 percent must be approved by the Contracting Director.

**The Contracting Director should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

5. Section 552.217-70 is added to read as follows:

552.217-70 Evaluation of Options.

As prescribed in 517.208, insert the following provision:

EVALUATION OF OPTIONS (XXX 1990)

(a) The Government will evaluate offers for award purposes by determining the lowest base period price. When option year pricing is based on a formula (e.g., changes in the Producer Price Indexes or other common standard); option year pricing is automatically considered when evaluating the base year price, as any change in price will be uniformly related to changes in market conditions. All options are therefore considered to be evaluated. Evaluation of options will not obligate the Government to exercise the option(s).

(b) The Government will reject the offer if exceptions are taken to the price provisions of the Economic Price Adjustment clause, unless the exception results in a lower maximum option year price. Such offers will be evaluated without regard to the lower option year(s) maximum. However, if the offeror offering a lower maximum is awarded a contract, the award will reflect the lower maximum.

(End of Clause)

Dated: June 27, 1990.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-15885 Filed 7-9-90; 8:45 am]

BILLING CODE 6820-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 91160-0003]

Foreign Fishing, Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed reapportionment and request for comments.

SUMMARY: The Secretary of Commerce proposes supplementing the amount of Pacific whiting available for joint venture processing in 1990 by 10,000 metric tons, an amount surplus to domestic processing needs in Washington, Oregon, and California. This proposal is based on the results of an inseason survey reassessing the needs of the domestic fishing industry. This action is intended to promote full utilization of the Pacific whiting resource and to provide for the needs of the domestic processing industry before making surplus amounts available to joint venture operations, as required by the Magnuson Fishery Conservation and Management Act.

DATES: Comments will be accepted through July 25, 1990.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle WA 98115-0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: Under the implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 611.70 and part 663, the Secretary of Commerce (Secretary) annually specifies a numerical optimum yield (OY) and the amounts of the OY that are available for domestic annual processing (DAP), joint venture processing (JVP), domestic annual harvest (DAH, which equals DAP + JVP), and the total allowable level of foreign fishing (TALFF). Six species have numerical OYs and of these, only

three, Pacific whiting, jack mackerel, and shortbelly rockfish, are not fully utilized by the domestic processing industry and have amounts designated for JVP or TALFF.

A survey of domestic processors, joint venture operators, and fishermens' trade associations was conducted in September of 1989 to determine domestic fishing and processing needs for 1990, as required by the regulations at 50 CFR 663.24. The survey results indicated that the 196,000 metric ton (mt) OY quota for Pacific whiting should be apportioned 35,000 mt for DAP and the remaining 161,000 mt for JVP. These annual specifications were published in the **Federal Register** at 55 FR 1036 (January 11, 1990).

The regulations also provide for adjusting these specifications during the fishing year if necessary to accommodate changes in the resource or the needs of the domestic industry. During the fishing year, near July 1, the annual specifications are reassessed by a telephone survey of the domestic fishing and processing industry, according to the regulations at 50 CFR 611.70(d), to determine whether there is any change in the domestic intent and capacity to harvest and process these species. Past and projected domestic catch, effort, and processing performance are taken into account. As a result of the reassessment, surplus DAP may be reapportioned to JVP.

NMFS conducted the inseason survey of domestic processing needs on June 6–22, 1990. NMFS has concluded, based on the inseason survey, that domestic processors will not utilize the entire 35,000 mt DAP and that 25,000 mt (a reduction of 10,000 mt) would accommodate all of the domestic processing needs in 1990. The survey also indicated interest in additional Pacific whiting from joint venture companies that operated in that fishery in 1990. Consequently, the Secretary proposes increasing the JVP for Pacific whiting from 161,000 mt to 171,000 mt by reapportioning 10,000 mt of surplus DAP to JVP.

The Secretary will consult with the Pacific Fishery Management Council at its July 11–12, 1990, meeting in Portland, Oregon, and will consider testimony received at that meeting and during the public comment period for this notice before making a final determination to reapportion 10,000 mt from DAP to JVP.

Secretarial Action: After consultation with the Council and considering past and projected U.S. catch, effort, and processing performance, the Secretary proposes the following changes to the specifications for Pacific whiting in 1990 (in thousands of metric tons) as published on January 11, 1990, in Table 2 of the **Federal Register** (55 FR 1038):

	Total OY	DAP	JVP	DAH	TALFF
Current Specification	196.0	35.0	161.0	196.0	0.0
Proposed Changes	196.0	25.0	171.0	196.0	0.0

Classification

The reassessment of the needs of the domestic industry and the reapportionment of surplus DAP to the JVP for Pacific whiting are based upon the most recent data available. During the public comment period, the aggregate data upon which the preliminary reassessment is based will be available for public inspection at the Regional Office during business hours (see **ADDRESSES**). This action is proposed under the authority of 50 CFR 611.70(d), is in compliance with Executive Order 12291, and is covered by the regulatory flexibility analysis and environmental impact statement prepared for the authorizing regulations. The action contains no additional collection of information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

List of Subjects in 50 CFR Part 663

Fisheries.

Dated: July 15, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–16033 Filed 7–9–90; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 132
Tuesday, July 10, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations, Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 199–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1990 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 4, 1990 (55 FR 335), the estimated aggregate quantity of meat articles other than products of Canada prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1990 is 1,242.0 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1990 is 1,160 million pounds.

Done at Washington, DC, this 2d day of July, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90–15984 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

[Docket No. 90–118]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Rice Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Louisiana State University, to allow the field testing in Acadia Parish, Louisiana, of rice plants genetically engineered to contain a gene encoding the maize transposon *Activator*. The assessment provides a basis for the conclusion that the field testing of these genetically engineered rice plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–029–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Louisiana State University, of Baton Rouge, Louisiana, has submitted an application for a permit for release into the environment, to field test rice plants genetically engineered to contain a gene encoding the maize transposon *Activator*. The field trial will take place in Acadia Parish, Louisiana.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the rice plants under the conditions described in the Louisiana State University application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Louisiana State University, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding the maize transposon *Activator* has been inserted into the rice genome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because pollen dissemination will be prevented by placing plastic bags over the developing panicles.

2. Neither the gene encoding the transposon nor the protein product confers on rice any plant pest characteristics.

3. The introduction of the transposon does not provide the transformed rice plants with any apparent selective advantage over nontransformed rice in their ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been inserted into the rice chromosome. These sequences do not confer on rice any plant pest characteristics.

5. The vector used to transfer the plant viral genes to the rice plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA).

7. The field test site is small (less than one-seventh of an acre) and is completely surrounded by agricultural land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 5th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–15985 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket Number 90–107]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit To Field Test Genetically Engineered Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in Arkansas County, Arkansas; Baker County, Georgia; Piatt and Jersey Counties, Illinois; Hamilton County, Indiana; Jasper County, Iowa; Oldham County, Kentucky; Lincoln County, Missouri; Saunders County, Nebraska; Pickaway County, Ohio; Hardeman County, Tennessee; and Sussex County, Virginia, of soybean plants genetically engineered to express a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–038–04.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate. The field trials will take place in Arkansas County, Arkansas; Baker County, Georgia; Piatt and Jersey Counties, Illinois; Hamilton County, Indiana; Jasper County, Iowa; Oldham County, Kentucky; Lincoln County, Missouri, Saunders County, Nebraska; Pickaway County, Ohio; Hardeman County, Tennessee; and Sussex County, Virginia.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as

well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvylshikimate-3-phosphate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature, chromosomal genetic material of soybeans can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because soybean is essentially self-pollinating and the field test plots are a sufficient distance from any sexually compatible plants with which cross-pollination might occur.

2. Neither the 5-enolpyruvylshikimate-3-phosphate synthase gene itself, nor its gene product, confers on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits, and there is no evidence that these traits can be conferred by the addition of a single gene.

3. The plant from which the 5-enolpyruvylshikimate-3-phosphate synthase gene was isolated is not a plant pest.

4. The 5-enolypyruvylshikimate-3-phosphate synthase gene provides the transformed soybean plants in this field test with little or no apparent selective advantage over nontransformed soybean in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvylshikimate-3-phosphate synthase gene to soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk. Although the vector contains DNA sequences derived from an organism with known plant pest potential, it has been disarmed by removal of the genes necessary for producing plant disease.

6. Regulatory sequences, derived from plant pest organisms and necessary for the function of the inserted genes, have also been transferred to recipient soybean, but these sequences confer no plant pest property on those plants.

7. The vector agent, the bacterium that was used to deliver the vector DNA and the 5-enolpyruvylshikimate-3-phosphate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

8. Horizontal movement of the introduced gene is not known to be possible. The foreign DNA is stably integrated into the plant genome.

9. Glyphosate is one of the modern herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

10. The field test will take place on 12 rural test sites, each of which is small (0.62 acres or less), in 11 States.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979 and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 5th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–15986 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 90–097]

U.S Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the month of April 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8674.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of April 1990:

Product license code	Date issued	Product	Establishment	Establishment license No.
12B5.40	04–16–90	Bursal Disease Vaccine, Killed Virus, Standard and Variant	Solvay Animal Health, Inc	195
1601.11	04–18–90	Fowl Laryngotracheitis Vaccine, Modified Live Virus	Tri Bio Laboratories, Inc	275
1651.01	04–17–90	Marek's Disease Vaccine, Live Chicken and Turkey Herpesvirus	Tri Bio Laboratories, Inc	275
17M1.20	04–16–90	Marble Spleen Disease Vaccine, Live Virus	Bio-Vac Laboratories, Inc	307
2101.00	04–19–90	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Pasteurella Multocida Bacterin.	Rhone Merieux, Inc	298
2639.00	04–26–90	Ehrlichia Risticii Bacterin	Rhone Merieux, Inc	298
3601.01	04–25–90	Normal Plasma, Equine Origin	Veterinary Dynamics, Inc	360
4885.20	04–30–90	Equine Rhinopneumonitis-Influenza Vaccine-Tetanus Toxoid, Modified Live and Killed Virun.	SmithKline Beckman Corporation	189
4895.20	04–30–90	Equine Influenza Vaccine-Tetanus Toxoid, Killed Virun	SmithKline Beckman Corporation	189
4A05.20	04–18–90	Pseudorabies Vaccine-Haemophilus Pleuropneumoniae Bacterin, Killed Virus.	Bio-Vac Laboratories, Inc	307
5017.00	04–25–90	Canine Borrelia Burgdorferi Antibody Test Kit	Medical Diagnostic Technologies, Inc	376

Product license code	Date issued	Product	Establishment	Establishment license No.
B665.01	04-11-90	Leptospira Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona, Killed Cultures, For Further Manufacture.	Coopers Animal Health, Inc	107
E017.00	04-25-90	Canine Borrelia Burgdorferi Antibody Test Modules, For Further Manufacture.	Gull Laboratories, Inc	382
G410.00	04-02-90	Clostridium Chauvoei-Septicum-Novyl-Sordellii-Perfringens Types C & D Bacterin-Toxoid, For Further Manufacture.	Coopers Animal Health, Inc	107

No product licenses were suspended, revoked, or terminated during April 1990.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biologics Establishment Licenses during the month of April 1990:

Establishment	Establishment license No.	Date issued
Medical Diagnostic Technologies, Inc	376	04-25-90
Gull Laboratories, Inc	382	04-25-90

No U.S. Veterinary Biologics Establishment Licenses were suspended, revoked, or terminated during the month of April 1990.

Done in Washington, DC, this 5th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-15947 Filed 7-9-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. 90-105]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: We are correcting an error that appeared in a notice published in the **Federal Register** on May 22, 1990 (55 FR 21047-21048, Docket No. 90-045). The notice advised the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the months of January and February 1990. In the twenty-fourth entry on the chart on page 21047, listing product licenses issued, under Product License Number A905.52, the Establishment and Establishment Number are listed incorrectly. The correct entry is as follows:

Product license code	Date issued	Product	Establishment	Establishment license No.
A905.52	09-20-90	Rabies Virus, Killed Virus, For Further Manufacture	ImmunVet, Inc	302-A

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6332.

Done in Washington, DC, this 5th day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-15987 Filed 7-9-90; 8:45 am]

BILLING CODE 3410-34-M

Food and Nutrition Service

Child and Adult Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1990-June 30, 1991

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals served in child care, outside-school-hours care and adult day care centers, the food service payment rates for meals served in day care homes, and the administrative reimbursement rates for sponsors of day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. The action announced in the notice will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3587).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR Part 226).

Background

Pursuant to sections 4, 11 and 17 of the National School Lunch Act (42 U.S.C. 1753, 1759a and 1766), section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) and §§ 226.4, 226.12 and 226.13 of the regulations governing the CACFP (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions. These rates shall be in effect during the period July 1, 1990–June 30, 1991.

As provided for under the National School Lunch Act and the Child Nutrition Act of 1966, all rates in the CACFP must be prescribed annually on July 1 to reflect changes in the Consumer Price Index for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes and the administrative reimbursement rates for sponsors of day care homes on July 13, 1989 (for the period July 1, 1989–June 30, 1990).

All States Except Alaska and Hawaii

Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	.1825
Free	.8975
Reduced	.5975
Lunches and Suppers:	
Paid	[1].1550
Free	[1]1.6075
Reduced	[1]1.2075
Supplements:	
Paid	.0400
Free	.4425
Reduced	.2200
Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	.7625
Lunches and Suppers	1.3775
Supplements	.4100
ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$60
Next 150 day care homes	46
Next 800 day care homes	36
Additional day care homes	32

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

Pursuant to section 12(f) of the NSLA (42 U.S.C. 1760(f)), the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Alaska—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	.2575
Free	1.4175
Reduced	1.1175
Lunches and Suppers:	
Paid	[1].2500
Free	[1]2.6025
Reduced	[1]2.2025
Supplements:	
Paid	.0650
Free	.7150
Reduced	.3575

Alaska—Continued

Alaska—Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	1.1975
Lunches and Suppers	2.2300
Supplements	.6650
Alaska—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$98
Next 150 day care homes	75
Next 800 day care homes	58
Additional day care homes	51

[1] These rates do not include the value of commodities (or cash-in lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The new payment rated for Hawaii are follows:

Hawaii

Hawaii—Meals Served in CENTERS—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts:	
Paid	.2025
Free	1.0400
Reduced	.7400
Lunches and Suppers:	
Paid	.1800
Free	1.8800
Reduced	1.4800
Supplements:	
Paid	.0475
Free	.5175
Reduced	.2575
Hawaii—Meals Served in DAY CARE HOMES—Per Meal Rates *in Dollars or Fractions thereof:*	
Breakfasts	.8800
Lunches and Suppers	1.6100
Supplements	.4800
Hawaii—ADMINISTRATIVE REIMBURSEMENT Rates for Sponsoring Organizations of Day Care Homes—Per Home/Per Month Rates *in Dollars:*	
Initial 50 day care homes	$71
Next 150 day care homes	54
Next 800 day care homes	42
Additional day care homes	37

[1] These rates do not include the value of commodities (or cash-in lieu fo commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the Federal Register.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 4.97 percent increase during the

12-month period May 1989 to May 1990 (from 126.7 in May 1989 to 133.0 in May 1990) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 4.36 percent increase during the 12-month period May 1989 to May 1990 (from 123.8 in May 1989 to 129.2 in May 1990) in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

Authority: Sections 4(b)(2), 11(a), 17(c) and 17(f)(3)(B) of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1759(a), 1766) and Section 4(b)(1)(B) of the Child Nutrition Act of 1966 as amended, (42 U.S.C. 1773b).

Dated: July 2, 1990.

George A. Braley,

Acting Administrator.

[FR Doc. 90-15855 Filed 7-9-90; 8:45 am]

BILLING CODE 3410-30-M

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to: (1) the "national average payments," the amount of money the Federal Government provides States for lunches and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; (2) the "maximum reimbursement rates," the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the school lunch program; and (3) the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the school lunch and school breakfast programs reflect changes in the food away from home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for milk reflects changes in the Producer Price Index for Fresh Processed Milk. These payments and rates are in effect from July 1, 1990 through June 30, 1991.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 milion or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based entrprises in domestic or export markets.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555 and No. 10.556 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act.

Definitions

The terms used in this Notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR part 210), the regulations for the Special Milk Program (7 CFR part 215), the regulations for School Breakfast Program (7 CFR part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR part 245).

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a half-pint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fresh Processed Milk, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 1990 to June 30, 1991, the rate of reimbursement for a half-pint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 11.00 cents. This reflects an increase of 9.41 percent in the Producer Price Index for Fresh Processed Milk from May 1989 to May 1990.

As a reminder, schools or institutions with pricing programs which elect to serve milk free to eligible children continue to receive the average cost of a half-pint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased half-pints) for each half-pint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to section 11 of the National School Lunch Act, as amended (42 U.S.C. 1759a), and section 4 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors, and to the maximum Federal reimbursement rates for meals served to children participating in the National School Lunch Program. Adjustments are prescribed each July 1, based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Lunch Payment Factors—Section 4 of the National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. There are two section 4 National Average Payment Factors (NAPFs) for lunches served under the National School Lunch Program. The lower payment factor applies to lunches served in school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment factor applies to lunches served in school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price. To supplement these section 4 payments, section 11 of the National School Lunch Act provides special cash assistance payments to aid schools in providing free and reduced-price

lunches. The section 11 NAPF for each reduced-price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the National School Lunch Act, maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates ensure equitable disbursement of Federal funds to school food authorities.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966, as amended, establishes National Average Payment Factors for free, reduced-price and paid breakfasts served under the School Breakfast Program and additional payments for schools determined to be in "severe need" because they serve a high percentage of needy children.

Revised Payments

The following specific section 4 of section 11 National Average Payment Factors and maximum reimbursement rates are in effect through June 30, 1991. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The Virgin Islands, Puerto Rico and the Pacific Territories use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served *less than 60 percent* free and reduced-price lunches in School Year 1988–89, the payments are: *Contiguous States*—15.50 cents, maximum rate 23.50 cents; *Alaska*—25.000 cents, maximum rate 36.75 cents; *Hawaii*—18.00 cents, maximum rate 27.25 cents.

In school food authorities which served *60 percent or more* free and reduced-price lunches in School Year 1988–89, payments are:

Contiguous States—17.50 cents, maximum rate 23.50 cents; *Alaska*—27.00 cents, maximum rate 36.75 cents; *Hawaii*—20.00 cents, maximum rate 27.25 cents.

Section 11 National Average Payment Factors—Contiguous States—Free lunch 145.25 cents, reduced-price lunch 105.25 cents. *Alaska*—free lunch 235.25 cents, reduced-price lunch 195.25 cents; *Hawaii*—free lunch 170.00 cents, reduced-price lunch 130.00 cents.

School Breakfast Program Payments

For Schools "not in severe need" the payments are: *Contiguous States*—free breakfast 89.75 cents, reduced-price breakfast 59.75 cents, paid breakfast 18.25 cents; *Alaska*—free breakfast 141.75 cents, reduced-price breakfast 111.75 cents, paid breakfast 25.75 cents. *Hawaii*—free breakfast 104.00 cents, reduced-price breakfast 74.00 cents, paid breakfast 20.25 cents.

For schools in "severe need" the payments are: *Contiguous States*—free breakfast 106.75 cents, reduced-price breakfast 76.75 cents, paid breakfast 18.25 cents; *Alaska*—free breakfast 169.25 cents, reduced-price breakfast 139.25 cents, paid breakfast 25.75 cents; *Hawaii*—free breakfast 124.00 cents, reduced-price breakfast 94.000 cents, paid breakfast 20.25 cents.

Payment chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per meal amount; the maximum lunch reimbursement rates; the breakfast National Average Payment Factors including "severe need" schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the Virgin Islands, Puerto Rico and the Pacific Territories are those specified for the contiguous States.

SCHOOL PROGRAMS—MEAL AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES

[Expressed in Dollars or Fractions Thereof.—Effective from July 1, 1990—June 30, 1991]

National school lunch program*		Less than 60%	60% or more	Maximum rate
Contiguous States	Paid	$.1550	$.1750	$.2350
	Reduced-price	1.2075	1.2275	1.3775
	Free	1.6075	1.6275	1.7775
Alaska	Paid	.25	.27	.3675
	Reduced-price	2.2025	2.2225	2.4675
	Free	2.6025	2.6225	2.8675
Hawaii	Paid	.18	.20	.2725
	Reduced-price	1.48	1.50	1.6775
	Free	1.88	1.90	2.0775

* Payments listed for Free & Reduced-Price Lunches include both section 4 and 11 funds.

School breakfast program		Non-severe need	Severe need
Contiguous States	Paid	.1825	.1825
	Reduced-price	.5975	.7675
	Free	.8975	1.0675
Alaska	Paid	.2575	.2575
	Reduced-price	1.1175	1.3925
	Free	1.4175	1.6975
Hawaii	Paid	.2025	.2025
	Reduced-price	.74	.94
	Free	1.04	1.24

Special milk program	All milk	Paid milk	Free milk
Pricing programs without free option	11.00	N/A	N/A.
Pricing programs with free option	N/A	11.00	Average cost ½ pint milk.
Nonpricing programs	11.00	N/A	N/A.

Authority: Sections 4, 8, and 11 of the National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759(a)) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773).

Dated: July 2, 1990.

George A. Braley,

Acting Administrator.

[FR Doc. 90-15852 Filed 7-9-90; 8:45 am]

BILLING CODE 3410-30

Forest Service

Revision of Arapaho and Roosevelt National Forests and Pawnee National Grassland Land and Resource Management Plan (Forest Plan); Arapaho and Roosevelt National Forest and Pawnee National Grassland; Boulder, Clear Creek, Gilpin, Grand, Jefferson, Larimer, and Weld Counties, Co.

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Arapaho and Roosevelt National Forests and the Pawnee National Grassland gives notice of the agency's intent to prepare an environmental impact statement on the revision of the Arapaho and Roosevelt National Forests and Pawnee National Grassland Land and Resource Management Plan (Forest Plan).

ADDRESSES: Send written comments to Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, 240 W. Prospect, Fort Collins, Colorado 80526.

FOR FURTHER INFORMATION CONTACT: Geoff Chandler, Forestg Planner, (303) 498-1201.

SUPPLEMENTARY INFORMATION: A Forest Plan shall ordinarily be revised on a 10-year cycle or at least every 15 years. A plan may also be revised whenever the Forest Supervisor determines that conditions or demands in the area covered by the plan have changed significantly. The current Arapaho and Roosevelt National Forest Land and Resource Management Plan was approved on May 4, 1984. The Forest is scheduled to complete its revision of the Forest Plan and FEIS in September 1993.

The Forest Plan revision will focus on changed conditions, issues, or demands in the areas covered by the Plan. Those sections of the Forest Plan which continue to be responsive to issues and demands, and which meet requirements for resource protection, will not be revised.

Through monitoring and evaluation of the Forest Plan, the Forest Supervisor of the Arapaho and Roosevelt National Forests and the Pawnee National Grassland has determined that the following topics should be reexamined during Forest Plan revision:

1. Determination of suitable timberlands and the allowable sale quantity of timber.
2. Management requirements for old growth and riparian areas.
3. Management of National Forest land near the interface between private and public lands.
4. Management of roadless areas.
5. Management of dispersed and developed recreation opportunities.

Federal, state, and local agencies, Native American tribes, individuals, and organizations are invited to submit comments on these and other topics which are relevant to management of the Arapaho and Roosevelt National Forests and the Pawnee National Grassland. Comments should be sent in writing to the address above by November 1, 1990.

Public involvement in the Plan revision process will be sought by utilizing a variety of scoping techniques. These will include mailings to individuals and organizations known to be interested in the Plan revision, newspaper articles, newsletters, public meetings, and open houses. Dates, locations, and times for public meetings and open houses will be announced in local news media and in newsletters.

Revision of the Forest Plan is expected to take 3 years; the draft environmental impact statement and proposed Forest Plan revision should be available for public review in December 1992. The final environmental impact statement, Record of Decision, and Forest Plan revision are scheduled to be completed by September 1993.

The comment period on the draft environmental impact statement will be a minimum of 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is important that those interested in this Plan revision participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

Several court rulings related to public participation in the environmental review process are pertinent to those interested in participating in the revision of the Arapaho and Roosevelt National Forests and Pawnee National Grassland Land and Resource Management Plan. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodsl,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

The official responsible for approving the revised Forest Plan is the Regional Forester, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, Colorado 80225. The Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, is delegated responsibility for preparing the revision.

Dated June 27, 1990.

M.M. Underwood, Jr.,

Forest Supervisor.

[FR Doc. 90-15884 Filed 7-9-90; 8:45 am]

BILLING CODE 3410-11-M

Medicine Wheel National Historic Landmark Improvements; Bighorn National Forest, Medicine Wheel Ranger district; Big Horn County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to disclose the environmental consequences of the proposed improvements at the Medicine Wheel National Historic Landmark on the Medicine Wheel Ranger District.

DATES: Comments concerning the scope of the analysis should be received in writing by August 31, 1990.

ADDRESSES: Written comments and suggestions should be directed to Don Zettel, Project Coordinator, Bighorn National Forest, Supervisors Office, 1969 S. Sheridan Ave, Sheridan , WY 82801 or Pete Chidsey District Ranger, Medicine Wheel Ranger District, P.O. Box 367, Lovell, WY 82431.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Don Zettel, Medicine Wheel Project Coordinator, phone (307) 672-0751.

SUPPLEMENTARY INFORMATION: The Forest Service is considering improving protection of both the archeological material present and the spiritual character of the Landmark, provide better interpretation of the Landmark, and reduce conflicts between ceremonial use and general public visitation.

We will consider a range of alternatives including road improvements, trail construction, protective and interpretive signs, interpretive brochures, an on site interpreter or security guard, changing the existing fence, controlling access, site monitoring, and relocating the existing parking lot and toilet facilities. A no action alternative will also be considered.

We invite other Federal agencies, state and local agencies, and interested individuals or organizations to participate in the project including the ongoing scoping process. This process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Previously received comments will be considered in the development of this document and need not be resubmitted. No public meetings prior to the Draft EIS are anticipated. Issues and proposals from previous meetings over the last two years are being considered.

The Draft EIS should be finished by the end of October, 1990, with the Final EIS out by spring 1991. The responsible official is Lloyd Todd, Forest Supervisor, Bighorn National Forest. (40 CFR 1501.7 and 1508.22)

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection agency publishes the notice of availablilty in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: June 25, 1990

George Gehrman,

Acting Forest Supervisor.

[FR Doc. 90-15929 Filed 7-9-90; 8:45 am]

BILLING CODE 3410-11-M

Fremont National Forest; Augur Creek Timber Sale; Intention To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) for the Augur Creek Timber Sale. The sale area is located south of Deadhorse and Campbell Lakes, along Augur Creek on the Paisley Ranger District of the Fremont National Forest in Oregon. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction. The proposed project will harvest approximately 12 million board feet of timber and construct 15 miles of road. It will be designed to comply with the Fremont National Forest Land and Resource Management Plan.

Federal, State, and local government agencies as well as individuals or organizations who may be interested in or affected by the decision are invited to comment on the proposed project. Comments may be submitted in writing, by phone call, by visiting those involved in the project planning or any other means available. To supplement written and informal oral comments, public meetings will also be held. Two meetings have been scheduled as part of the public scoping process. The first will be at the Community Center, Paisley, Oregon, on July 26, 1990, at 7:30 p.m. The second will be at the Elks Lodge, Lakeview, Oregon, on August 2, 1990, at 7:30 p.m.

DATES: Comments concerning the scope of the analysis should be submitted by August 15, 1990.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Orville D. Grossarth, Forest Supervisor, Fremont National Forest, 524 North G Street, Lakeview, Oregon 97630.

FOR FURTHER INFORMATION CONTACT: Questions and comments concerning the proposed project should be directed to Mike Balboni, Fremont National Forest, Paisley Ranger District, P.O. Box 67,

Paisley, Oregon 97636, phone (503) 943–3114.

SUPPLEMENTARY INFORMATION: The range of alternatives will include a no action alternative, involving no harvest or road construction, and additional alternatives to respond to issues generated during the scoping process. Tentative action alternatives include timber harvest, with volumes ranging from 8 to 20 million board feet, and new road construction, ranging from 8 to 25 miles.

The EIS will tier to the Fremont National Forest Land and Resource Management Plan and Final EIS of May 1989, which provides overall guidance in achieving the desired future condition for the area.

A public scoping process will be used to assist in the analysis and data gathering for this proposal. Notices published in local newspapers and radio announcements as well as mailings will be used to solicit comments from the public. Those interested in the project will receive periodic updates during the analysis process. Scoping will assist the project interdisciplinary team in:

1. Identification of potential issues,
2. Identification of issues to be analyzed in depth,
3. Elimination of insignificant issues or those which have been covered by a previous environmental review, and
4. Identification of data to be used in the analysis of alternatives.

Licenses and permits required for the proposed action are already held by the Forest Service who is the lead agency for this project.

Tentative issues that have been identified include: Impacts on old growth, impacts on water quality, impacts on potential research areas, and impacts on wildlife habitat.

Some of the decisions to be made with this proposal are: whether or not to harvest timber at this time; and if harvest is to occur at this time, where will the harvest units be placed, where will the roads be placed, and what type of harvest methods will be used.

Orville D. Grossarth, Forest Supervisor, Fremont National Forest, is the responsible official for this project.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1991. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register.**

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 591, 553 (1978). Also environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages of chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June 1991. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1502.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 223.

Dated: June 28, 1990.

Orville D. Grossarth,

Forest Supervisor.

[FR Doc. 90–15948 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–11–M

RIN No. 0596–AA92

Solid Waste Disposal Policy

AGENCY: Forest Service, USDA.

ACTION: Notice; withdrawal of proposed policy.

SUMMARY: On June 26, 1990, the Forest Service published in the **Federal Register** at 55 FR 25990 a notice of proposed policy to revise the Agency's policy governing solid waste disposal sites on National Forest System lands and requested public comments. The Agency has decided to withdraw the proposal in order to conduct additional coordination with other agencies nd seek consultation with affected parties. Upon conclusion of this coordination and consultation, the Agency will give notice of the proposed policy in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, Forest Service, USDA, (202) 453–8248.

Dated: July 3, 1990.

[FR Doc. 90–15958 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Intent To Conduct a Public Scoping Meeting and Prepare an Environmental Assessment for a Proposed Project at Alma in Buffalo County, WI

AGENCY: Rural Electrification Administration.

ACTION: Notice of Intent to Conduct a Public Scoping Meeting and Prepare an Environmental Assessment.

SUMMARY: The Rural Electrification Administration (REA) in cooperation with the U.S. Department of Energy (DOE) intends to conduct a public scoping meeting and prepare an Environmental Assessment (EA) in connection with a project proposed by Dairyland Power Cooperative (DPC) of La Crosse, Wisconsin. The project is one of thirteen selected by DOE in December 1989 for negotiation under round three of the Clean Coal Technology Program. These projects were selected with the objective of demonstrating innovative, energy efficient, enviromentally superior coal technologies for commercialization in the 1990's. Based on information gathered to develop the EA, the public scoping and other input from Federal, State, and local agencies and general public, REA may decide to prepare an Environmental Impact Statement (EIS). The project will be located at the Alma Station owned by DPC. The project will

demonstrate an advanced clean coal combustion technology called pressurized circulating fluidized bed (PCFB). The proposed project will burn 574 tons/day of Illinois No. 6 coal to produce approximately 50 megawatts of electric power. Basically, two existing 20 magawatt steam turbines (Units No. 1 and No. 2) will be repowered using the PCFB. The PCFB will be built entirely within the confines of the existing plant. An existing DPC solid waste disposal facility will be used. No REA financing is involved in this project. However, REA will need to approve the use of Dairyland's general funds and related financing arrangements. Pending negotiations, the DOE may provide Federal funding to cost share in the project expenses.

DATES: REA will conduct a scoping meeting at the following location: August 15, 1990, at Buffalo County Courthouse, Room No. 301, at 407 South Second Street, Alma, Wisconsin, at 7 p.m.

ADDRESSES: All interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the scoping meeting, in order for the comments to be part of the formal record. Comments should be sent to Mr. Larry A. Belluzzo, Director, Northwest Area—Electric, Rural Electrification Administration, Room 0230-South, U.S. Department of Agriculture, 14th and Independence Avenue, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Larry A. Belluzzo, Director, Northwest Area—Electric, above address, telephone: (202) 382–1400, or FTS 382–1400, or Dairyland Power Cooperative, 3200 East Avenue-South, La Crosse, Wisconsin 54602–0817, telephone (608) 788–4000.

SUPPLEMENTARY INFORMATION: REA, in order to meet its requirements under the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and REA Environmental Policies and Procedures 7 CFR part 1794, hereby gives notice that it intends to conduct a public scoping meeting and prepare an Environmental Assessment for construction and operation of a PCFB project at DPC's existing Alma Station. The proposed project would be located in Buffalo County, Wisconsin. REA will not provide any financing assistance to DPC for the project. DOE may provide some Federal funding for the project.

Alternatives to be considered by REA may include among other options: (1) No action; (2) purchase of power from other utilities; (3) energy conservation and load management; (4) new conventional power plant; (5) alternative sites; (6) alternative fluidized bed systems; and (7) alternative unit sizes.

The public scoping meeting, to be conducted by a representative of REA, will be held to solicit public input and comments including, but not limited to, the nature of the proposed project, its possible location, alternatives, any significant issues, and environmental concerns that should be addressed in the EA. Requests for additional information concerning the scoping meeting may be directed to DPC or REA at the addresses shown above.

If information developed during the review process indicates the proposed project will significantly affect the quality of the human environment, REA will prepare an EIS. A final action on the proposed proposed project will be taken only after compliance with environmental procedures require by NEPA have been satisfied. In addition, based on the REA documentation, the DOE will evaluate the findings and publish a separate, independent assessment of the project.

Dated: July 5, 1990.

John H. Arnesen,

Assistant Administrator, Electric.

[FR Doc. 90–15989 Filed 7–9–90, 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Supplement No. 1 West Fork Bayou L'Ours Watershed, LA

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); The Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Supplement No. 1 West Fork Bayou L'Ours Watershed, Lafourche Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Horace J. Austin, State Conservationist, Soil Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national adverse impacts on the environment. As a result of these findings, Horace J. Austin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns structural and vegetative measures to help provide protection to coastal marsh lands. The planned works of improvement include 12 acres of critical area plantings, 28 structures for water control (weirs), 30 earthen channel dams or plugs, 34 miles of low level dikes or overflow banks, and 50 miles of shoreline erosion protection plantings.

The Notice of a Finding of No Signficant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file any may be reviewed by contacting Horace J. Austin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: June 28, 1990.

Horace J. Austin,

State Conservationist.

[FR Doc. 90–75930 Filed 7–9–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (BE–13); and Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who

Enters into a Joint Venture with, a Foreign Person (BE–14).

Form Number: Agency—BE–13 & BE–14; OMB—0608–0035.

Type of Request: Revision of a currently approved collection.

Burden: 1,275 respondents; 1,912.5 reporting hours.

Average Hours Per Response: 1.5 hours.

Needs and Uses: The survey is required in order to obtain comprehensive initial data concerning new foreign direct investment in the United States. The data are needed to measure the amount of new foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States.

Affected Public: Businesses or other for-profit institutions.

Frequency: One-time report when a transaction occurs.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 5, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–16035 Filed 7–9–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports Program—Wave III (Mandatory).

Form Number(s): Various.

Agency Approval Number: 0607–0476.

Type of Request: Revision of a currently approved collection.

Burden: 4,188 hours.

Number of Respondents: 4,188.

Avg. Hours Per Response: 1 hour.

Needs and Uses: The Current Industrial Reports Program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Primary users of these data are Government agencies, business firms, trade associations, and private research and consulting organizations.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 5, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–16036 Filed 7–9–90; 8:45 am]

BILLING CODE 3510–07–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Former Field Representative Job Attitude Survey Questionnaire.

Form Number(s): BC–1294.

Agency Approval Number: 0607–0404.

Type of Request: Revision of a currently approved collection.

Burden: 13 hours.

Number of Respondents: 160.

Avg Hours Per Response: 5 minutes.

Needs and Uses: During the last several years, field representative turnover has been and continues to be high. The Bureau of the Census will use the survey as a structured exit interview program to isolate causes and formulate appropriate national and local solutions.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 5, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–16037 Filed 7–9–90; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

[Docket No. 900661–0161]

Foreign Availability Assessment, Dynamic Random Access Memories

AGENCY: Office of Foreign Availability, Bureau of Export Adminsitration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) is initiating an assessment of foreign availability of certain Dynamic Random Access Memories (DRAMs) to controlled countries. OFA is seeking public comments on the foreign availability of such items worldwide.

DATES: The period for submission of information will close August 9, 1990.

ADDRESSES: Submit information relating to this foreign availability assessment to: Anatoli Welihozkiy, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB–701, 14th Street and Pennsylvania Avanue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4518, U.S. Department of Commerce, 14th Steet and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Byrg E. Bonnelycke, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and 5(h) of the EAA, OFA assesses the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR Part 730 *et seq.*) establishes the foreign availability procedures and criteria. OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On March 5, 1990, OFA accepted for filing a Foreign Availability Submission pursuant to section 5(f) of the EAA relating to decontrol of high-density DRAMs with all three of the parameter constraints:

(A) A maximum of 1 Mbits (i.e. 1,048,576 bits) per package, AND

(B) A READ access time (tRAC) within the inclusive range of 70 to 120 nanoseconds, AND

(C) Rated for operation only within the commercial temperature range of 0 °C to 70 °C

to controlled countries. This item is controlled for national security reasons under Export Control Commodity Number (ECCN) 1564A (d) of the Commodity Control List (15 CFR 799.1, Supp. 1).

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By August 5, 1990, consistent with the requirements of the EAA, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be especially useful:

—Product names and part designations of the U.S. and non-U.S. items;
—Names and locations of non-U.S. sources;
—Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
—Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
—An estimate of market demand and the potential economic impact of the control on the U.S. item;
—Extent to which any allegedly comparable item is based on U.S. technology;
—Product names, part designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item; and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is certified.

Evidence supporting such relevant information may include, but is not limited to: foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." OFA either will accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information OFA accepts as privileged under section (b)(3) or (4) of the Freedom of Information Act (5 U.S.C. 522) will be kept confidential and will not be available for public inspection, except as authorized by law. Communications from agencies of the United States Government and foreign governments will not be made available for public inspection.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close 30 days from the date of publication of this notice. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: July 3, 1990.

Joan M. McEntee,

Deputy Under Secretary for Export Administration.

[FR Doc. 90-15944 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 475]

Resolution and Order Approving the Application of the Greater New Haven Chamber of Commerce for a Special-Purpose Subzone at the Pharmaceutical Products Plant of Miles, Inc., in West Haven, CT

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater New Haven Chamber of Commerce, filed with the Foreign-Trade Zones Board on November 7, 1988, requesting special-purpose subzone status at the pharmaceutical products manufacturing plant of Miles, Inc., in West Haven, Connecticut, adjacent to the New Haven Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are

satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Foreign-Trade Zones Board; Washington, DC; Grant of Authority To Establish a Foreign-Trade Subzone in West Haven, CT

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater New Haven Chamber of Commerce, Grantee of Foreign-Trade Zone No. 162, has made application (filed November 7, 1988, FTZ Docket 36–88, 53 FR 46101) in due and proper form to the Board for authority to establish a special-purpose subzone at the pharmaceutical and medical products manufacturing plant of Miles, Inc. (subsidiary of Bayer AG), in West Haven, Connecticut, adjacent to the New Haven Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed November 7, 1988, the Board hereby authorizes the establishment of a subzone at the Miles plant in West Haven, Connecticut, designated on the records of the Board as Foreign-Trade Subzone 162A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and also to the following express conditions and limitations;

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, all necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 29th day of June, 1990, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–15862 Filed 7–9–90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 478]

Resolution and Order Approving Application of the Metropolitan Nashville Port Authority for Special-Purpose Subzone at Saturn Corp. Auto Plant Maury County, TN

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Metropolitan Nashville Port Authority, grantee of FTZ 78, filed with the Foreign-Trade Zones Board (the Board) on September 25, 1989, requesting special-purpose subzone status for the auto manufacturing plant of Saturn Corporation (subsidiary of General Motors Corporation) in Maury County, Tennessee, adjacent to the Nashville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, in hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Maury County, TN Adjacent to the Nashville Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) in authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Metropolitan Nashville Port Authority, Grantee of Foreign-Trade Zones No. 78, has made application (filed September 25, 1989, FTZ Docket 18–89, 54 FR 41316) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing plant of Saturn Corporation (subsidiary of General Motors Corporation) located in Maury County, Tennessee, adjacent to the Nashville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed September 25, 1989, the Board hereby authorizes the establishment of a subzone at the Saturn automobile manufacturing plant, designated on the records of the Board as Foreign-Trade Subzone 78E at the location mentioned above and more particularly described on the maps and drawings accompanying the application.

said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, all necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 29th day of June, 1990, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-15863 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 476]

Resolution and Order Approving the Application of the Port of Houston Authority for a Special-Purpose Subzone at the Du Pont Hydrofluoric Acid Manufacturing Plant in La Porte, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Houston Authority, grantee of FTZ 84, filed with the Foreign-Trade Zones Board (the Board) on January 3, 1989, requesting authority for special-purpose subzone status at the hydrofluoric acid manufacturing plant of E. I Du Pont de Nemours and Company, located in La Porte, Texas, within the Houston Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in La Porte, TX

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Houston Authority, Grantee of Foreign-Trade Zone No. 84, has made application (filed January 30, 1989, FTZ Docket 1–89, 54 FR 7576) in due and proper form to the Board for authority to establish a special-purpose subzone at the hydrofluoric acid manufacturing plant of E. I. Du Pont de Nemours and Company in La Porte, Texas, within the Houston Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed January 30, 1989, the Board hereby authorizes the establishment of a subzone at the Du Pont hydrofluoric plant in La Porte, Texas, designated on the records of the Board as Foreign-Trade Subzone 84C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations, and also to the following express conditions and limitations;

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, all necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 29th day of June 1990, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-15865 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 477]

Resolution and Order Approving the Application of the City of Midland, TX for a Foreign-Trade Zone in Midland, TX

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the

Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Midland, Texas, filed with the Foreign-Trade Zones Board on September 26, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Midland, Texas, within the Midland Customs user-fee airport, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Grant of Authority to Establish, Operate, and Maintain a Foreign-Trade Zone in Midland, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Midland, Texas (the Grantee) has made application (filed September 26, 1988, FTZ Docket 30–88, 53 FR 38972) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Midland, Texas, at the Midland International Airport, a Customs user fee airport facility;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 165, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municiapl authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 29th day of June 1990, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

Attest: John J. Da Ponte, Jr., *Executive Secretary.*

[FR Doc. 90–15864 Filed 7–9–90; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–428–602]

Brass Sheet and Strip From West Germany; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, the Department of Commerce has conducted an administrative review of the antidumping duty order on brass sheet and strip from West Germany. The review covers five manufacturers and/or exporters of this merchandise for the period August 22, 1986 through February 29, 1988.

As a result of review, the Department has preliminarily determined that the dumping margin for Wieland Werke AG (including its wholly-owned subsidiaries Langenberg Kupfer-und Messingwerke and Metallwerke Schwarzwald GmbH) is 7.94 percent, and for William Prym and Schwermetall Halbzeugwerke, 16.18 and 7.30 percent, respectfully.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Richard Rimlinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–1131.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 6997) an antidumping duty order on brass sheet and strip from West Germany. The petitioner requested in accordance with 19 CFR 353.22 of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping administrative review on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

This review covers five manufacturers and/or exporters of this merchandise for the period August 22, 1986, through February 29, 1988. Three of these five firms, Wieland Werke AG and its wholly owned subsidiaries, Langenberg Kupfer-und Messingwerke and

Metallwerke Schwarzwald GmbH, had shipments to the United States during the review period. Another firm, William Prym, failed to respond to the Department's antidumping duty questionnaire. For this firm we used the best information available for assessment and cash deposit purposes. Because William Prym declined to respond to our questionnaire, we determined best information available to be the highest rate for a responding firm during the fair value investigation. One firm, Schwermetall Halbzeugwerke, had no shipments to the United States during the period of review. For this firm, we used the "all other" rate established during the fair value investigation.

Scope of the Review

Imports covered by the review are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from West Germany. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200 series of Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition are defined by other C.D.A. or U.N.S. series are not covered by this order. During the review period, such merchandise was classifiable under item numbers 612.3960, 612.3982, 612.3986 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff Schedules ("HTS") item numbers 7409.21.00 and 7409.29.00. TSUSA and HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

The review covers five manufacturers/exporters of this merchandise for the period August 22, 1986 through February 29, 1988.

United States Price

In calculating United States price, we used purchase price (PP) or exporter's sales price (ESP) as defined in section 772 of the Tariff Act, where appropriate. PP and ESP were based on the c. & f. delivered, duty paid, packed price to unrelated purchasers in the United States. We made adjustments, where applicable, for discounts, foreign inland freight and insurance, U.S. duty, brokerage and handling, ocean freight, marine insurance, U.S. inland freight and insurance, and end-of-year loyalty rebates. For Wieland's ESP transactions, we made deductions, where appropriate, for foreign inland freight and insurance, brokerage and handling, ocean freight, marine insurance, U.S. duty, U.S. freight and insurance, end-of-year loyalty rebates, credit expenses, other U.S. selling expenses and the value added through further manufacture prior to sale in the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Tariff Act. Home market price was based on the packed, ex-factory or delivered price to unrelated purchasers. We made deductions where appropriate for inland freight, handling, insurance, end-of-year loyalty rebates, after sale consignment expenses, and warranty expenses. We established separate categories of "such or similar" merchandise, pursuant to section 771(16)(C) of the Act, on the basis of form of material (sheets or strips), coating (tinned/non-tinned), grade (alloy composition), and dimensions (gauge and width). With respect to certain sales comparisons, in which identical gauge and width categories were not sold in the home market and in the United States, Wieland failed to provide cost adjustment information for differences in merchandise. As a result, we were unable to match these sales. In these instances, we used the best information available, which we determined to be the weighted-average margin for those sales where we did have matches. We believe that this is a reasonable approach because this adjustment affects only a small percentage of Wieland's total U.S. sales, and the prices and quantities of the unmatched sales did not appear to be extraordinary in comparison with those of Wieland's other sales.

We have denied a cost-based quantity discount claim made by Wieland. Our review of Wieland's response indicates that there is not a close correlation between prices and quantities sold. We also denied Wieland's claimed adjustment to account for metal price fluctuations because the contemporaneous home market sales compared to U.S. sale prices encompassed both home market sales made prior to and subsequent to the dates of U.S. sales, and this tended to balance the effect of any metal price fluctuations.

We made circumstance-of-sale adjustments to FMV under section 353.56 of the Commerce Regulations for credit expenses and warranty costs. For U.S. exporter's sales price transactions, we deducted indirect selling expenses in the home market to offset other U.S. selling expenses, in accordance with § 353.56(b)(2) of our regulations. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Period	Margin (percent)
Wieland Werke AG	8/22/86-2/29/88	7.94
Langonberg Kupfer-und Messingwerke	8/22/86-2/29/88	7.94
Metallwerke Schwarzwald GmbH	8/22/86-2/29/88	7.94
William Prym	8/22/86-2/29/88	16.18
Schwermetall Halbzeugwerke	8/22/86-2/29/88	[1] 7.30

[1] No shipments during the period.

Interested parties may submit case briefs on these preliminary results within 30 days of the date of publication of this notice and may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication of this notice, or the first workday thereafter. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins will be required for the above firms. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of the merchandise occurred after February 29, 1988, and which is unrelated to any reviewed firm or any

other previously reviewed firm, a cash deposit of 7.94 percent shall be required. These deposit requirements are effective for all shipments of West German brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated June 29, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-15945 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-05-M

[A-580-805]

Antidumping Duty Order; Industrial Nitrocellulose From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial nitrocellulose from the Republic of Korea (ROK) was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of industrial nitrocellulose from the ROK.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of industrial nitrocellulose for consumption from the ROK made on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 377-1778 or 377-1769, respectively.

SUPPLEMENTARY INFORMATION: The product covered by this order is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on May 14, 1990, the Department made its final determination that industrial nitrocellulose from the ROK is being sold at less than fair value (55 FR 21054, May 22, 1990). On June 28, 1990, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to sections 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial nitrocellulose from the ROK. There antidumping duties will be assessed on all unliquidated entries of industrial nitrocellulose from the ROK entered, or withdrawn from warehouse, for consumption on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (55 FR 7754).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin percentage
Miwon Company, Ltd.	66.30
All Others	66.30

This notice constitutes an antidumping duty order with respect to industrial nitrocellulose from the ROK, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: July 2, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15869 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-804]

Antidumping Duty Order; Industrial Nitrocellulose From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial nitrocellulose from Brazil was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of industrial nitrocellulose from Brazil.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of industrial nitrocellulose for consumption from Brazil made on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 10, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Louis Apple, Office of

Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–2613 or 377–1769, respectively.

SUPPLEMENTARY INFORMATION: The product covered by this order is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

In accordance with Section 735(a) of the Act (19 U.S.C. 1673d(a)), on May 29, 1990, the Department made its final determination that industrial nitrocellulose from Brazil is being sold at less than fair value (55 FR 23120, June 6, 1990). On June 28, 1990, in accordance with Section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with Sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to Section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial nitrocellulose from Brazil. These antidumping duties will be assessed on all unliquidated entries of industrial nitrocellulose from Brazil entered, or withdrawn from warehouse, for consumption on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (55 FR 7760).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin Percentage
Companhia Nitro Quimica Brasileira	61.25
All Others	61.25

This notice constitutes an antidumpting duty order with respect to industrial nitrocellulose from Brazil, pursuant to Section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with Section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: July 2, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–15866 Filed 7–9–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–802]

Antidumping Duty Order; Industrial Nitrocellulose from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial nitrocellulose from the People's Republic of China (PRC) was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of industrial nitrocellulose from the PRC.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of industrial nitrocellulose for consumption from the PRC made on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: August 10, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1778 or 377–1769, respectively.

SUPPLEMENTARY INFORMATION: The product covered by this order is industrial nitrocellulose, currently classified under HTS subheading 3912.20.00. Prior to Juanuary 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on May 14, 1990, the Department made its final determination that industrial nitrocellulose from the PRC is being sold at less than fair value (55 FR 21051, May 22, 1990). On June 28, 1990, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial nitrocellulose from the PRC. These antidumping duties will be assessed on all unliquidated entries of industrial nitrocellulose from the PRC entered, or withdrawn from warehouse, for consumption on or after March 5, 1990, the date on which the Department published its "Preliminary

Determination" notice in the Federal Register (55 FR 7753).

On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin Percentage
China North Industries Corp	78.40
All others	78.40

This notice constitutes an antidumping duty order with respect to industrial nitrocellulose from the PRC, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: July 2, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15867 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-812]

Antidumping Duty Order; Industrial Nitrocellulose from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial nitrocellulose from Japan was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of industrial nitrocellulose from Japan.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of industrial nitrocellulose for consumption from Japan made on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: August 10, 1990.

FOR FURTHER INFORMATION CONTACT: Joel Fischl or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1778 or 377-1769, respectively.

SUPPLEMENTARY INFORMATION: The product covered by this order is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on May 14, 1990, the Department made its final determination that industrial nitrocellulose from Japan is being sold at less than fair value (55 FR 21053, May 22, 1990). On June 28, 1990, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial nitrocellulose from the PRC. These antidumping duties will be assessed on all unliquidated entries of industrial nitrocellulose from Japan entered, or withdrawn from warehouse, for consumption on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the Federal Register (55 FR 7762).

On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin Percentage
Asahi Chemical Industry Co., Ltd	66.00
All others	66.00

This notice constitutes an antidumping duty order with respect to industrial nitrocellulose from Japan, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: July 2, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15868 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of quarterly update of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S.

Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign govenments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for several of the countries for which subsidies were identified in our last quarterly update to the annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 29230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: June 29, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix

QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy	Net [2] subsidy
Belgium	European Community (EC) Restitution payments	42.3¢/lb.	42.3¢/lb.
Canada	Export Assistance on Certain Types of Cheese	29.9¢/lb.	29.9¢/lb.
Denmark	EC Restitution payments	58.6¢/lb.	58.6¢/lb.
Finland	Export Subsidy	145.7¢/lb.	145.7¢/lb.
France	EC Restitution payments	50.4¢/lb.	50.4¢/lb.
Greece	EC Restitution payments	35.7¢/lb.	35.7¢/lb.
Ireland	EC Restitution payments	42.9¢/lb.	42.9¢/lb.
Italy	EC Restitution payments	69.4¢/lb.	69.4¢/lb.
Luxembourg	EC Restitution payments	42.3¢/lb.	42.3¢/lb.
Netherlands	EC Restitution payments	43.3¢/lb.	43.3¢/lb.
Norway	Indirect (Milk) Subsidy	18.5¢/lb.	18.5¢/lb.
Consumer Subsidy		41.0¢/lb.	41.0¢/lb.
Total		59.5¢/lb.	59.5¢/lb.
Portugal	EC Restitution payments	41.2¢/lb.	41.2¢/lb.
Spain	EC Restitution payments	43.1¢/lb.	43.1¢/lb.
Switzerland	Deficiency payments	96.9¢/lb.	96.9¢/lb.
U.K.	EC Restitution payments	35.8¢/lb.	35.8¢/lb.
W. Germany	EC Restitution payments	51.1¢/lb.	51.1¢/lb.

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 90-15874 Filed 7-9-90; 8:45 am]
BILLING CODE 3510-DS-M

[C-351-037]

Certain Cotton Yarn Products From Brazil; Final Results of Countervailing Duty Administration Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On May 11, 1990, the Department of Commerce published the preliminary results of its administrative review on certain cotton yarn products from Brazil for the period January 1, 1987 through December 31, 1987. We have now completed that review and determine the net subsidy to be zero or *de minimis* for four firms and 2.36 percent *ad valorem* for all other firms.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 19766) the preliminary results of its administrative review of the countervailing duty order on certain cotton yarn products from Brazil (42 FR 14089; March 15, 1977). The Department has now completed that review in accordance with section 751 of the tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Brazilian yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under items 301.01 through 301.98, inclusive, and under item 302.— with statistical suffixes 20, 22, and 24 of the *Tariff Schedules of the United States*. This merchandise is currently classifiable under *Harmonized Tariff Schedule* (HTS) items 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00. The HTS items are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and seven programs: (1) CACEX export financing; (2) an income tax exemption

for export earnings; (3) BEFIEX; (4) the IPI export credit premium; (5) CIC-OPCRE 6-2-6 financing; (6) Price Equalization Program; and (7) FST financing.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be zero or *de minimis* for four firms and 2:36 percent *ad valorem* for all other firms.

(1) Unitika do Brazil Industria Textil Ltda.;
(2) Cia. Industrial e Agricola Boyes;
(3) Minasa Trading S.A.; and
(4) Filobel Comercial Ltda.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of Brazilian carded cotton yarn from the four firms listed above, and to assess countervailing duties of 2.36 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1987 and on or before December 31, 1987.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise from the four firms listed above and, and a result of the November 1988 reduction in the equalization fee for CACEX export financing, to collect a cash deposit of estimated countervailing duties of 1.98 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 29, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 15875 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-803]

Antidumping Duty Order; Industrial Nitrocellulose From the United Kingdom

AGENCY: Import Administration International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial nitrocellulose from the United Kingdom was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of industrial nitrocellulose from the United States Kingdom.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of industrial nitrocellulose for consumption from the United Kingdom made on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4087 or 377-5288, respectively.

SUPPLEMENTARY INFORMATION: The product covered by this order is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on May 14, 1990, the Department made its final determination that industrial nitrocellulose from the United Kingdom is being sold at less than fair value (55 FR 21058, May 22, 1990). On June 28, 1990, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exeeds the United States price for all entries of industrial nitrocellulose from the United Kingdom. These antidumping duties will be assessed on all unliquidated entries of industrial nitrocellulous from the United Kingdom entered, or withdrawn from warehouse, for consumption on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (55 FR 7763).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin Percentage
Imperial Chemical Industries	11.13
All others	11.13

This notice constitutes an antidumping duty order with respect to industrial nitrocellulose from the United Kingdom, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: July 2, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15870 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-803]

Antidumping Duty Order; Industrial Nitrocellulose From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial nitrocellulose from the Federal Republic of Germany (FRG) was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of industrial nitrocellulose from the FRG.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of industrial nitrocellulose for consumption from the FRG made on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4136 or 377-5288, respectively.

SUPPLEMENTARY INFORMATION: The product covered by this order is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States* (TSUS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on May 14, 1990, the Department made its final determination that industrial nitrocellulose from the FRG is being sold at less than fair value (55 FR 21058, May 22, 1990). On June 28, 1990, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that such imports materially injure a U.S. Industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial nitrocellulose from the FRG. These antidumping duties will be assessed on all unliquidated entries of industrial nitrocellulose from the FRG entered, or withdrawn from warehouse, for consumption on or after March 5, 1990, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (55 FR 7763).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/Producers/Exporters	Margin Percentage
Wolff Walsrode AG	3.84
All others	3.84

This notice constitutes an antidumping duty order with respect to industrial nitrocellulose from the FRG, pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)). Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21.

Dated: July 2, 1990.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-15871 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-813]

Preliminary Determination of Sales at Less Than Fair Value; Certain Light Scattering Instruments and Parts Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of certain light scattering instruments and parts thereof (LSIs) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of LSIs from Japan, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by September 12, 1990.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Bradford Ward or Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288 or (202) 377-8922, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of LSIs from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the notice of initiation on April 17, 1990 (55 FR 14333), the following events have occurred. On May 16, 1990, the ITC published its determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of LSIs (55 FR 20315).

On May 8, 1990, the Department's questionnaire was presented to Otsuka Electronics Co., Ltd. (Otsuka). This manufacturer accounts for all exports of the subject merchandise to the United States during the period of investigation (POI).

On May 23, 1990, Otsuka sumitted a letter notifying the Department that it did not intend to reply to the Department's questionnaire.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff scheduled were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are light scattering instruments, and the parts thereof specified below, from Japan that have classical measurement capabilities, whether or not also capable of dynamic measurements. Classical measurement (also known as static measurement) capability usually means the ability to measure absolutely (*i.e.*, without reference to molecular standards) the weight and size of macromolecules and submicron particles in solution, as well as certain molecular interaction parameters, such as the so-called second virial coefficient. (An instrument that uses single-angle instead of multi-angle measurement can only measure molecular weight and the second virial coefficient.) Dynamic measurement (also known as quasi-elastic measurement) capability refers to the ability to measure the diffusion coefficient of molecules or particles in suspension and deduce therefrom features of their size and size distribution. LSIs subject to this investigation employ laser light and may use either the single-angle or multi-angle measurement technique.

The following parts are included in the scope of the investigation when they are manufactured according to specifications and operational requirements for use only in an LSI as defined in the preceding paragraph: scanning photomultiplier assemblies, immersion baths (to provide temperature stability and/or refractive index matching), sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches. LSIs subject to this investigation may be sold inclusive or exclusive of such accessories as personal computers, cathode ray tube displays, software, or printers. LSIs are currently classifiable under HTS subheading 9027.30.40. LSI parts are currently classifiable under HTS subheading 9027.90.40.

Scope Issues

Petitioner requested that certain, specifically identified LSI parts be included in the scope of this investigation. The Department has included certain parts in the scope because respondent was unwilling to provide, in the context of this proceeding, any information on trade in LSI parts. Absent reliable information to the contrary, the Department must infer that these LSI parts are being, or are likely to be, sold at less than fair value.

LSI parts that are subject to this investigation probably comprise a small percentage of all entries under HTS subheading 9027.90.40. Different items with the same name as subject parts may enter under subheading 9027.90.40. To avoid the unintended suspension of liquidation of non-subject parts, those items entered under subheading 9027.90.40 and generally known as scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches must be accompanied by an importer's declaration to the Customs Service to the effect that they are not manufactured for use in a subject LSI. Any scanning photomultiplier assemblies, immerson baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches entering unaccompanied by such a certificate may be assumed to be manufactured for subject LSIs.

Period of Investigation

The period of investigation is October 1, 1989, through March 31, 1990.

Fair Value Comparisons

To determine whether sales of LSIs from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We used best information available as required by section 776(c) of the Act because Otsuka failed to respond to the Department's request for information. We determined that the best information available was information submitted by the petitioner.

United States Price

U.S. price is based on an alleged actual price from Otsuka's unrelated U.S. distributor to a U.S. customer, as reported in the petition. It is logical to assume that the unrelated distributor must apply a mark-up to cover expenses and profit, but petitioner provided no specific information on the mark-up percentages. Working backward, we assumed as best information available that the distributor marks up the LSI it buys from Otsuka by 10 percent of the LSI cost (*i.e.*, the alleged actual price) for selling, general, and administrative expenses (SG&A) and 8 percent of the figure representing cost plus SG&A to account for profit. This methodology, using the statutory percentages for constructed value calculations under 19 CFR 353.50(a)(2), was chosen as a reasonable estimate in the absence of information on the actual mark-up percentage. We also adjusted for U.S. Customs fees and duty. We made no further adjustments because we had no information on other charges associated with U.S. sales.

Foreign Market Value

We based FMV on a November 1989 price list issued by Otsuka for Japan, as reported in the petition. We applied an estimated discount to the report home market list price for purposes of calculating the FMV. We based the estimated discount on the difference, as a percentage of U.S. list price, between the U.S. list price and an alleged actual U.S. price for an LSI, both of which were reported in the petition. We made no further adjustments because we had no information on circumstances of sale and charges associated with home market sales.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of LSIs and the specified parts thereof from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The

suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Margin percentage
Otsuka Electronics Co., Ltd	129.71
All others	129.71

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 16, 1990, and rebuttal briefs no later than July 23, 1990. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10 a.m. on July 25, 1990, at the U.S. Department of Commerce, Room 3606, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. section 1673(f)).

Dated: June 29, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-15872 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than July 31, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

	Period
Antidumping Duty Proceeding:	
Canada: Pig Iron (A-122-020)	07/01/89-06/30/90
German Democratic Republic: Solid Urea (A-429-601)	07/01/89-06/30/90
Iran: Certain In-Shell Pistachios (A-507-502)	07/01/89-06/30/90
Japan: Malleable Cast-Iron Pipe Fittings (A-588-605)	07/01/89-06/30/90
Japan: High Power Microwave Amplifiers and Components Thereof (A-588-005)	07/01/89-06/30/90
Japan: Fabric Expanded Neoprene Laminate (A-588-404)	07/01/89-06/30/90
Japan: Synthetic Methionine (A-588-041)	07/01/89-06/30/90
Romania: Solid Urea (A-485-601)	07/01/89-06/30/90
Union of Soviet Socialist Republics: Solid Urea (A-461-601)	07/01/89-06/30/90
Suspension Agreements:	
Brazil: Certain Forged Steel Crankshafts (C-351-609)	01/01/89-12/31/89
Countervailing Duty Proceeding:	
European Economic Community: Sugar (C-408-046)	01/01/89-12/31/89
Uruguay: Leather Wearing Apparel (C-355-001)	01/01/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by July 31, 1990.

If the Department does not receive by July 31, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash

deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 29, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-15873 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-009]

Certain Iron-Metal Construction Castings From Mexico; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of countervailing duty administrative review.

SUMMARY: The Department of Commerce has terminated the countervailing duty administrative review of certain iron-metal construction castings from Mexico initiated on April 27, 1990.

EFFECTIVE DATE: July 10, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 30, 1990, Alhambra Foundry, Inc., Allegheny Foundry Co., Campbell Foundry Co., Deeter Foundry, Inc., East Jordan Iron Works, Inc., LeBaron Foundry, Inc., Municipal Castings, Inc., Neenah Foundry Co., Pinkerton Foundry, Inc., U.S. Foundry and Manufacturing Co., and Vulcan Foundry, Inc., domestic producers of certain iron-metal construction castings, requested a countervailing duty administrative review of certain iron-metal construction castings from Mexico for the period January 1, 1989 through December 31, 1989. No other interested parties requested the review. On April 27, 1990, the Department initiated the review of the countervailing duty order on certain iron-metal construction castings from Mexico (55 FR 17792).

On June 1, 1990, the domestic producers withdrew their request. As a result, the Department has determined to terminate the review.

This notice is published in accordance with 19 CFR 355.22.

Dated: June 28, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-15946 Filed 7-9-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 90769-0141]

RIN No. 0693-AA62

Second Solicitation of Comments on Proposed Federal Information Processing Standard (FIPS) on Electronic Data Interchange (EDI)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) adopting national and international standards for Electronic Data Interchange (EDI) is proposed for Federal agency use. This proposed FIPS was initially sent to all Federal agencies for review, and was announced in the Federal Register (54 FR 38424) on September 18, 1989. Many agencies made helpful comments, and based on those comments, the proposed FIPS was revised.

This FIPs will adopt families of standards known as X12 and EDIFACT which were developed by Accredited Standards Committee X12 on Electronic Data Interchange, and by the United Nations Economic Commission for Europe, Working Party (Four) on Facilitation of International Trade Procedures (UN/ECE/WP.4).

The X12 standards are now available from Washington Publishing Company, phone 1-800-334-4912. EDIFACT standards are available from Data Interchange Standards Association, Secretariat, North American EDIFACT Board, 1-703-548-7005.

Because NIST has made substantive changes to this proposed FIPS which will be submitted to the Secretary of Commerce for approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

DATES: Comments on this revised proposed FIPS must be received on or before August 24, 1990.

ADDRESSES: Written comments on this revised proposed standard should be sent to: Director, National Computer Systems Laboratory, ATTN: Revised Proposed FIPS for EDI, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Roy G. Saltzman, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3376.

Dated: July 3, 1990.

John W. Lyons,

Director.

Federal Information Processing Standards Publication xxx, 1990 Month Day, Announcing the Standard for Electronic Data Interchange (EDI)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Electronic Data Interchange (EDI) (FIPS PUB xxx).

2. Category of Standard. Software Standard, Electronic Data Interchange.

3. Explanation. This publication announces the adoption, as a Federal Information Processing Standard, of identified national and international standards for EDI. In EDI, data that would be traditionally conveyed on paper documents are transmitted or communicated electronically according to established rules and formats. The data that are associated with each type of functional document, such as a purchase order or invoice, are transmitted together as an electronic message. The formulated data may be transmitted from originator to recipient via telecommunications or physically transported on electronic storage media.

EDI typically implies a sequence of messages between two parties, for example, buyer and seller, either of whom may serve as originator or recipient. Messages from buyer to seller could include, for example, the data necessary for request for quotation (RFQ), purchase order, receiving advice, and payment advice; messages from

seller to buyer could similarly include the data for response to RFQ, purchase order acknowledgement, shipping notice, and invoice.

Implementation of EDI requires the use of a family of interrelated standards. The family must include standards for types of messages (also called "transaction sets"), and for transmission envelopes, data elements, and short sequences of data elements called data segments. A message or transaction set standard defines the sequence of data segments that constitute that message or transaction set. The data segment directory lists all data segments, and defines the identifier and sequence of data elements constituting each. The data element dictionary provides the specifications of all data elements. Transmission envelopes provide management information about the included messages to the carrying and receiving systems.

The standardization of message formats, and of data segments and elements within the messages, makes possible the assembling, disassembling, and processing of the messages by computer.

This FIPS PUB adopts, with specific conditions, the families of standards known as X12 and EDIFACT. This FIPS PUB does not mandate the implementation of EDI systems within the Federal Government; rather it requires the use of X12 or EDIFACT, subject to the conditions specified below, when Federal departments or agencies implement EDI systems. The X12 and EDIFACT standards have been developed respectively by Accredited Standards Committee X12 on Electronic Data Interchange (ASC X12), accredited by the American National Standards Institute, and by the United Nations Economic Commission for Europe—Working Party (Four) on Facilitation of International Trade Procedure (UN/ECE/WP.4). Technical input from the United States in the development of EDIFACT is through the North American EDIFACT Board (NAEB) which is a standing task group of ASC X12.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), National Computer System Laboratory.

6. Cross Index and Related Documents.

6.1 Cross Index.

- FIPS PUB 146, Government Open Systems Interconnection Profile (GOSIP), August, 1988.
- FIPS PUB 113, Computer Data Authentication, May, 1985.
- FIPS PUB 65, Guideline for Automated Data Processing Risk Analysis, August, 1979.
- FIPS PUB 46-1, Data Encryption Standard, January, 1988.

6.2 Related Documents.

- NIST Special Publication 500-177, Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 3, December, 1989.
- CCITT X.400—1984, Message Handling Systems: System Model—Service Elements [This and the following two documents available from Omnicom, Vienna, VA; phone: 703-281-1135].
- CCITT X.401—1984, Message Handling Systems: Basic Service Elements and Optional User Facilities.
- CCITT X.411—1984, Message Handling Systems: Message Transfer Layer.

7. Objectives. The primary objectives of this standard are:

a. To promote the achievement of the benefits of EDI: reduced paperwork, fewer transcription errors, faster response time for procurement and customer needs, reduced inventory requirements, and faster payment of vendors;

b. To ease the interchange of data sent via EDI by the use of standards for data formats and transmission envelopes;

c. To minimize the cost of EDI implementation by preventing duplication of effort.

8. Applicability.

8.1 Conditions of Application. This standard is applicable to the interchange of data on a particular subject, between a Federal agency and another organization (which may be another Federal agency), if (1) The data are to be transmitted electronically, and (2) X12 transaction sets or EDIFACT messages meeting the data requirements of the Federal agency for the subject of the interchange have been developed and approved under the conditions set forth in this FIPS PUB.

8.2 Use of GOSIP. FIPS PUB 146 (GOSIP) specifies a set of open systems interconnection (OSI) protocols for computer networking that are intended for acquisition and use by Federal agencies. The use of those protocols to transmit EDI documents is a planned addition to GOSIP requirements and will be included in a future version of the GOSIP standard. EDI transmission via telecommunications shall use these OSI protocols to transmit EDI documents at such time when GOSIP has been revised to include protocols for EDI.

In the interim, Federal agencies may (but are not required to) transfer EDI documents using Message Handling Systems (MHS) implementations built in conformance with the CCITT 1984 Recommendations. See section 7.12.5 of the NIST Stable Implementation Agreements for Open Systems Interconnection Protocols, Version 3, for the recommended procedures.

8.3 Subject Matter. Primary applicability of this FIPS PUB on EDI is to business information exchanged by trading partners with extensions to government concerns, as that is the subject matter of current X12 and EDIFACT standards and development activities. Business information encompasses the entire range of information associated with commercial, financial, and industrial transactions, and with field unit supply. Examples of applications (not necessarily the subject of current standards) are:

a. Vendor search and selection. price/sales catalogs, bids, proposals, requests for quotations, notices of contract solicitation, debarment data, trading partner profiles;

b. Contract award. notices of award, purchase orders, purchase order acknowledgments, purchase order changes;

c. Product data. specifications, manufacturing instructions, reports of test results, safety data;

d. Shipping, forwarding, and receiving. shipping manifests, bills of lading, shipping status reports, receiving reports;

e. Customs. tariff filings, customs declarations;

f. Payment information. invoices, remittance advices, payment status inquiries, payment acknowledgments;

g. Inventory control. stock level reports, resupply requests, warehouse activity reports;

h. Maintenance. service schedules and activity, warranty data;

i. Tax-related data. tax information and filings;

j. Insurance-related data. claims submitted, claims approved.

8.4 Additional Applicability. This standard also is applicable to the electronic interchange of formatted data, between a Federal agency and another organization, concerning (1) A type of subject matter undergoing standardization for which no X12 or EDIFACT standards have yet been approved or for which the current standards fail to meet agency requirements, or of (2) a type of subject matter that ASC X12 or UN/ECE/WP.4 have not yet considered for standardization. For the immediate future, the latter includes subject matter such as environmental or natural

resource status; criminal justice; administrative, demographic, economic, educational, or health statistics; Government facility status; etc.

8.4.1. Federal agencies deciding to employ electronic interchange of data for case (1) Above (standards available or under development but not meeting agency requirements) shall explicitly submit their requirements for X12 and EDITFACT standardization, either directly to ASC X12 or NAEB (contact Manager, Standards Maintenance, Data Interchange Standards Association, see Subsection 9.1 for address and phone), or through the auspices of NIST.

8.4.2. Agencies deciding to employ electronic interchange of data for case (2) above (subject matter not yet considered for standardization) are encouraged to submit their requirements for standardization and to use current X12 and/or EDIFACT standards to the extent possible. Use of X12 or EDIFACT should achieve the benefits of standard envelope processing protocols, and standard data elements, segments, and procedural rules and guidelines. Agencies so doing would then be in a better position to adopt the appropriate X12 or EDIFACT standards, should such be considered and approved at a later date.

9. Specifications. Documents are available that define the standard X12 transaction sets and EDIFACT messages as well as the underlying standards for both families. Developments are continuing in both families of standards.

9.1 Source of Documents. Documents defining both the X12 and EDIFACT families of standards are available from: Data Interchange Standards Association (DISA), 1800 Diagonal Road—Suite 355, Alexandria, VA 22314, Phone: (703) 548–7005.

9.2 X12 Documents.

Underlying standards for X12 include:

X12.3 Data Element Dictionary
X12.5 Interchange Control Structure
X12.6 Application Control Structure
X12.22 Data Segment Directory

X12 transaction sets include the following (not a complete list). Additional transaction sets are continually being identified, developed, and submitted for standardization.

X12.1 Purchase Order (850)
X12.2 Invoice (810)
X12.4 Payment Order/Remittance Advice (820)
X12.7 Request For Quotation (840)
X12.8 Response To Request For Quotation (843)
X12.9 Purchase Order Acknowledgment (855)
X12.10 Ship Notice/Manifest (856)
X12.11 Order Status Inquiry (869)
X12.12 Receiving Advice (861)
X12.13 Price/Sales Catalog (832)
X12.14 Planning Schedule With Release Capability (830)
X12.15 Purchase Order Change (860)
X12.16 Purchase Order Change Request Acknowledgment (865)
X12.20 Functional Acknowledgment (997)

9.3 EDIFACT Documents. Underlying standards for EDIFACT include:

International Standard ISO 9735: Electronic Data Interchange For Administration, Commerce And Transport (EDIFACT)—Application Level Syntax Rules.

UN/TDID Trade Data Interchange Directory, consisting of the following components:

UN/EDIFACT Syntax Implementation Guidelines
UN/EDIFACT Message Design Guidelines
UN/EDIFACT Data Elements Directory—EDED
UN/EDIFACT Code List Directory—EDCL
UN/EDIFACT Segments Directory—EDSD
UN/EDIFACT Composites Directory—EDCD
UN/EDIFACT Message Directory—EDMD

EDIFACT messages (United Nations Standard Messages—UNSMs) include the following. Additional messages are continually being identified, developed, and submitted for standardization.

Invoice Message—INVOIC

Purchase Order Message—ORDERS

9.4 Versions of Documents. Dates of issue have not been stated for the documents listed above, since the documents are subject to periodic update and revision.

X12 documents are identified by version number; updates are identified by release number. The 1983 standards are referred to as Version 001; the 1986 standards are Version 002. Release 004 to Version 002 was published in December, 1989. ASC X12 plans an annual release. In each X12 transmission, the utilized version and release values are transmitted at a particular point within the header.

EDIFACT documents that have achieved full standardization (Status 2) will be updated once a year (beginning in 1991) and are identified by a number of the form yy.1, where yy is the last two digits of the year.

10. Implementation.

10.1 Schedule for Adoption. This FIPS PUB is effective six months after publication in the **Federal Register** announcing approval by the Secretary of Commerce. After that date, Federal agencies that are not now using EDI for subject matter for which X12 or EDIFACT standards have been approved and issued shall utilize only those standards in EDI systems that they procure or develp. Agencies already using those standards shall continue to do so. Agencies using industry-specific standards for EDI on the effective date of this FIPS PUB shall be governed by Subsection 10.3.

10.2 Selection of X12 or EDIFACT. X12 and EDIFACT are separate, although similar, families of standards. The existence of one does not preclude the other. They can and, for the foreseeable future must, coexist. Efforts are being made, however, to align the standards as closely as possible, eventually providing for full compatibility between syntaxes and data dictionaries. For planning purposes, the Federal government recognizes the objective of the ASC X12 to align with UN/EDIFACT by 1994.

Until the completion of full alignment, Federal agencies may utilize either X12 or EDIFACT standards. In selecting a family of standards, agencies should attempt to maximize economy and efficiency and to minimize the cost imposed on U.S. businesses. Consistent with these two criteria, agencies should use X12 standards for domestic interchanges, and X12 or EDIFACT standards for international interchanges. Agencies may employ both families of standards where required to meet the needs of trading partners and to be consistent with the two criteria.

10.3 Continued Use of EDI Industry Standards. Federal agencies using industry-specific EDI standards on the effective date of this FIPS PUB may continue to use those standards for five years. However, such agencies shall, without delay, submit their standardization requirements as indicated in subsection 8.4.1. Industry-specific EDI standards may be used beyond five years only if no equivalent X12 or EDIFACT standards, as appropriate, have been approved and issued within four years of the effective date of this FIPS PUB. If an equivalent X12 or EDIFACT standard, as appropriate, is approved and issued after four years from the effective date of this FIPS PUB, Federal agencies using an industry-specific standard shall have one year to convert, following the issuance of the annual release containing the approved standard. An approved X12 or EDIFACT standard is defined in Subsection 10.4.

10.4 Version/Release Selection. Federal agencies shall employ those X12 standards fully approved by ASC X12 or those EDIFACT standards having achieved Status 2 (i.e., full approval by UN/ECE/WP.4), as published in the annual releases from the two standardizing organizations. Agencies, in their agreements with trading partners, may utilize any release that is less than four years old; that is, the most

recent release and the three preceding yearly releases are implementable.

10.5 Security and Authentication. Agencies shall employ risk management techniques to determine the appropriate mix of security controls needed to protect specific data and systems. The selection of controls shall take into account procedures required under applicable laws and regulations.

Optional tools and techniques for implementation of security and authentication may be provided by ASC X12 and UN/ECE/WP.4 for use in connection with their respective families of standards. Agencies may utilize these tools and techniques, and/or they may utilize other methods in systems supporting the EDI data interchange. Methods and procedures implemented shall be consistent with applicable FIPS PUBS and guidance documents issued by NIST.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code.

Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the agency.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication xxx (FIPSPUB xxx), and title. Payment may be made by check, money order, or NTIS deposit account.

[FR Doc. 90-15982 Filed 7-9-90; 8:45 am]
BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council, the Council's Scientific and Statistical Committee (SSC), its Administrative Committee and its Advisory Panel (AP) will hold separate public meetings on July 17-19, 1990. The public meetings will be held at the locations indicated below. Fishermen and other interested persons are invited to attend the public meetings, which will be conducted in English; however, simultaneous English/Spanish translation services will be available during the Council and AP meetings. The public will be allowed to submit oral or written statements regarding the agenda items.

Council—The Council will begin its two-day, 70th regular public meeting on July 18, 1990, at 9 a.m., in the "Salon Bahia" of the Villa Parguera Hotel, La Parguera, Lajas, Puerto Rico. The meeting will recess at 5 p.m. On July 19 the Council will reconvene its meeting at 9 a.m., and adjourn at approximately noon. Among other topics, the Council will discuss the draft Queen Conch Fishery Management Plan (FMP); the possibility of developing a Coral FMP, and the requirement for an overfishing definition within the Lobster FMP.

SSC and AP—The SSC and AP will begin their meetings on July 17 from 1 p.m. to 5 p.m., to disucss the above-mentioned Council issues and to submit recomendations to the Council. The SSC meeting will be held in the conference room of the Marine Sciences Department, Magueyes Island, La Parguera, Lajas, Puerto Rico.

The AP meeting will be held in the conference room of the Villa Parguera Hotel, La Parguera, Lajas, Puerto Rico.

Administrative Committee—The Administrative Committee will meet on July 17 from 1 p.m., to approximately 5 p.m., to discuss the Cribbean Council's administrative operations. The public meeting will take place at the "Salon Bahia" of the Villa Parguera Hotel.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone: (809) 766-5926.

Dated: July 3, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-15858 Filed 7-9-90; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Navy

Finding of no Significant Impact for Realignment of Naval Station Ingleside, Texas, Closure of Naval Station Lake Charles, Louisiana, and Closure of Naval Station Galveston, Texas

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared and an Environmental Impact Statement is not being prepared for the proposed realignment of Naval Station (NAVSTA) Ingleside, Texas; closure of NAVSTA Lake Charles, Louisiana; and closure of NAVSTA Galveston, Texas.

As part of the proposed action, homeports at Lake Charles and Galveston will not be completed. The reserve oiler homeported at NAVSTA Lake Charles, and the two frigates and two minesweepers homeported at NAVSTA Galveston will be relocated to NAVSTA Ingleside. Site improvements already made at Galveston, along with land areas formerly proposed by the

Navy to utilize the site, will be reassigned, transferred, or excessed by the Navy. Appropriate environmental documentation, in compliance with NEPA, will be prepared for disposal and subsequent reuse of these Navy lands and facilities at a later time. The Lake Charles site and improvements will revert to the ownership of the Lake Charles Harbor and Terminal District.

In order to accommodate the five additional ships at NAVSTA Ingleside, the proposed action includes a 380 foot addition to the pier, which is being constructed as part of the strategic homeporting program; and, increasing the turning basin adjacent to the pier from 105 to 115 acres. This in-water work will involve the dredging of 500,000 cubic yards of material with upland disposal on Corps of Engineers Disposal Area 10. In addition, modifications to shore based facilities include additions to the medical/dental clinic, shore intermediate maintenance activity, child development center, general warehouse; resiting recreational ball fields; and construction of additional fleet parking.

The Secretary of Defense Commission on Base Closures and Realignments, pursuant to the Base Closure and Realignment Act of 1988 (Pub. L. 100-526), recommended NAVSTA Lake Charles and NAVSTA Galveston be closed, and NAVSTA Ingleside be realigned. The Secretary of Defense accepted and the Congress concurred with these recommendations. In addtion, the Congress exempted the provisions of NEPA from closure and realignment decisions associated with Pub. L. 100-526; however, the provisions of NEPA apply to implement closures and realignments.

Given Congressional concurrence to realign NAVSTA Ingleside to accommodate ships from NAVSTA Lake Charles and NAVSTA Galveston, alternative berthing plans were examined. One berthing plan would require a 750 foot wharf extension and a 300 foot pier extension to accommodate the additional ships. Also, the turning basis would be expanded requiring the dredging of 30 additional acres of shallow bay bottom. This alternative would require up to 2,000,000 cubic yards of new dredging from the area. This alternative would also require the fill of 0.2 acres of fringe marsh and would destroy 1 acre of seagrass bed. A second berthing plan would require a 380 foot extension to the pier and a 10 acre expansion of the turning basin, thus requiring the dredging of 500,000 cubic yards of material. The second berthing plan was chosen as it was the least environmentally demaging.

Disposal alternatives for dredged material were also analyzed and included ocean disposal at the Port Arkansas disposal area, upland disposal at Corps of Engineers disposal Sites 6, 10, 11, and 13, and upland disposal at the Trans American Natural Gas Corporation site. While disposal at the ocean disposal site impacts the enviroment the least, the site, which has a capacity of 2,400,000 cubic yards was established for new work and maintenance of the Corpus Christi Ship Channel expansion. The proposed dredge material disposal of 500,000 cubic yards represents about 21% of the capacity of this site; this could significantly affect future expansion of the Corpus Christi Ship Channel by using a large portion of the disposal capacity of the site for the proposed action. Therefore, this alternative was eliminated from further consideration. Of the upland sites, Corps of Engineers Disposal Area 10 was determined to be the least damaging environmentally and most economical, thus this is the preferred location for dredge material disposal.

Impacts associated with the proposed action are not considered to be significant. The closure of NAVSTA Lake Charles will not significantly affect physical or biological resources in the area. As discussed in the United States Navy Gulf Coast Strategic Homeporting Draft Enviromental Impact Statement (DEIS), appendix III, Lake Charles, of August 1986 and the United States Navy Gulf Coast Strategic Homeporting Final Enviromental Impact Statement (FEIS) of January 1987, NAVSTA Lake Charles was to be constructed on 30 acres of an existing upland dredged material disposal site located on the Industrial Canal turning basin to ultimately homeport a reserve oiler and two reserve patrol craft. Construction of the homeport started in October 1988 and was halted in February 1989.

Prior to halting the contract, completed work included the grading of 480,000 cubic yards of fill material for subsequent construction of upland shore facilities, construction of 50 feet of bulkhead for a berthing wharf and the dredging and disposal of 216,235 cubic yards of material for the wharf. Benthic communiites disturbed by the dredging will repopulate via immigration from adjacent benthic populations.

The DEIS and FEIS for strategic homeporting estimated a population increase in Calcasieu Parish of 1,099 new residents as a result of the homeporting action. Since the Navy halted construction of the homeport in the early stages of construction, no significant numbers of new residents related to homeporting moved into the Parish; therefore, the proposed closure will have no significant impact to local schools, roads, utilities, housing, or community services.

As discussed in the DEIS, appendix II, Galveston, and the FEIS, NAVSTA Galveston was to be constructed on 50 acres of an existing upland dredged material disposal site located at the east end of Galveston Island to ultimately homeport two reserve frigates, two reserve mine sweepers, and one patrol craft. Contruction of the homeport started in October 1988 and was halted in February 1989.

Prior to halting the contract, work completed included grading of 125,000 cubic yards of material for subsequent construction of upland shore facilities. This material was also placed along an existing jetty to act as a working surface for later construction of a wharf. As a result, 5.7 acres of intertidal wetlands were filled. This fill was authorized by the U.S. Army Corps of Engineers. To mitigate this wetland loss and return the site to its previous condition, the Navy will excavate 1.6 acres of the fill to an elevation to create aquatic subtidal habitat and 4.1 acres to an elevation to create intertidal habitat along the jetty. Smooth cordgrass will be planted in the intertidal habitat area.

The DEIS and FEIS estimated a population increase in the Galveston area of 2,300 new residents as a result of the homeporting action. Since the Navy halted construction of the homeport in the early stages of construction, no significant numbers of new residents related to homeporting moved into the Calveston area; therefore, the proposed closure will have no significant impact to local schools, roads, utilities, housing, or community services.

As discussed in the DEIS, appendix I, Ingleside, and the FEIS, NAVSTA Ingleside was to be constructed on a 484 acre site located on Corpus Christi Bay to serve as a homeport for a battleship, training aircraft carrier, guided missile cruiser, destroyer, and patrol craft. Construction of shore and upland facilities to accommodate these ships are nearing completion.

The proposed 380 foot pier extension and 10 acre turning basin expansion will require the dredging of 500,000 cubic yards of new material. Analysis and characterization of this material was presented in the DEIS and FEIS; this material is suitable for upland disposal. The current U.S. Army Corps of Engineers premit for dredging will be amended to include this new work.

No submarged seagrass or fringe marsh will be impacted by the proposed dredging. Benthic communities disturbed by the dredging will repopulate via immigration from adjacent benthic populations. The proposed dredging will result in the loss of 10 acres of shallow open bay. To compensate for this loss, an additional 1.3 acres of smooth cordgrass planting will be added to the 55 acres of smooth cordgrass to be created on Mustang Island by the Original Homeport mitigation plan.

Gray water, wastewater generated from onboard sources such as showers and sinks, laundry areas, and food preparation areas, is collected for transfer to shore based treatment facilities from the homeported battleship, aircraft carrier, and the cruiser. The destroyer and patrol craft do not have holding tanks for gray water; it is discharged into Corpus Christi Bay. However, as discussed in the DEIS and FEIS, this discharge is minor and does not significantly impact the water quality of the bay. The oiler and two frigates proposed for homeporting have the ability to transfer gray water to shore facilities for treatment. The two minesweepers proposed for homeporting do not have this capability; they will discharge gray water into Corpus Christi Bay. This increased loading represents about 0.3% of the projected 1995 point source loadings discharging into the bay as projected by the Coastal Bend Council of Governments Areawide Wastewater Management Plan. The mixing by currents and tidal movements near the site of discharge will dilute and diffuse the relatively small organic loadings from gray water discharges. No water quality standards violation or significant water quality impact will occur from this additional gray water discharge.

All homeported ships have the ability to transfer black water (raw sewage) and bilge water (oily waste and other contaminants) to shore facilities for treatment. Existing shore facilities have the capacity to handle treatment requirements from the additional ships.

Upland facilities proposed will be constructed as additions to existing facilities. Stormwater associated from the proposed sites will be transported by existing stormwater control facilities.

The DEIS and FEIS estimated that construction and operation of NAVSTA Ingleside would increase the population of San Patricio and Nueces counties by 10,281 people. This estimate was revised by the Navy in 1989 to account for surface action group and aircraft carrier training staffing changes; this estimate placed the population gain at 8,751 people. The proposed action of realignment of NAVSTA Ingleside combined with the homeporting action is estimated to ultimately result in a population gain of 10,150 people, which is 131 people less than estimated by the DEIS and FEIS.

The current area wide supply of privately-owned affordable housing can accommodate Navy families, as well as normal demand trends. Based on existing available single-family homes, about ⅓ of Navy families would likely establish residence in Corpus Christi and ⅔ of Navy families would likely establish residence in Rockport, Aransas Pass, Ingleside, Gregory, and Portland.

Generally, the forecasted need for additional school facilities and personnel in the DEIS and FEIS was overstated. In addition, enrollment decreases have been reported for the Ingleside Independent School District (ISD), Gregory-Portland ISD, and Aransas Pass ISD. Corpus Christi ISD and Rockport-Fulton ISD reported slight enrollment increases. It is anticipated that these school districts can accommodate additional children associated with the proposed action.

The proposed action will not impact endangered species. Resources listed or determined eligible for listing on the National Register of Historic Places will not be impacted by the proposed action. Area roads will not be impacted as a result of reassigning personnel from NAVSTA Lake Charles and NAVSTA Galveston to NAVSTA Ingleside.

Based on information gathered during preparation of the EA, the Navy finds that closure of NAVSTA Lake Charles and NAVSTA Galveston, and realignment of NAVSTA Ingleside will not significantly impact the environment.

The EA prepared by the Navy addressing this action is on file and may be reviewed by interested parties at the place of origin: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 10068, 2155 Eagle Drive, Charleston, SC 29411-0068 (Attn: Mr. Laurens Pitts (Code 203), telephone (803) 743-0893). A limited number of copies of the EA are available to fill single copy requests.

A final decision by the Navy on this Finding Of No Significant Impact will occur in 30 days from the **Federal Register** publication date. The public is invited to submit comments on the proposed action to the address given above prior to the end of this period.

Dated: July 2, 1990.

B.J. O'Connell,

Captain, CEC, USN, Assistant for Planning and Real Estate, Shore Activities Division, Deputy Chief of Naval Operations (Logistics).

Dated: July 2, 1990.

Sandra M. Kay,

Alternate Federal Register, Certifying Officer.

[FR Doc. 90-15876 Filed 7-9-90; 8:45 am]

BILLING CODE 3810-AE-M

Public Hearing for the Draft Environmental Impact Statement for Proposed Main Gate Intersection Improvements at Naval Weapons Station Concord, CA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed main gate intersection improvements at Naval Weapons Station (WPNSTA) Concord, California.

The Navy proposes to construct an alternate transportation route for ordnance that is moved between the waterfront and mainside areas. Presently, ordnance on trains and trucks must cross Port Chicago Road via an at-grade crossing in order to access the waterfront and mainside areas. These movements of ordnance delay general public users of Port Chicago Road and necessitates a substantial law enforcement effort. The purpose of the proposed action is to improve safety and security for Navy truck and train crossings, and for the general public utilizing Port Chicago Road.

Alternatives studied in the DEIS include construction of a Port Chicago road underpass, Port Chicago Road overpass, relocation of Navy railroad and access road east of the community of Clyde, Navy management of Port Chicago Road, and the preferred alternative of construction of a Navy railroad and access road overpass. Impacts are analyzed in the DEIS and include wetland impacts resulting from construction of the overpass, and improvements in traffic circulation and air quality as a result of improved access and ordnance movements.

The DEIS has been distributed to various federal, state, local agencies, local elected officials, interest groups and the media. A limited number of single copies are available at the address listed at the end of this announcement.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on August 3, 1990, beginning at 7 p.m. in the Concord City Counsel Chamber Auditorium, 1950 Parkside Drive, Concord, California.

The public hearing will be conducted by the U.S. Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight shall be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the Commander, Western Division, Naval Facilities Engineering Command, P.O. Box 727, Attn: Code 1833, San Bruno, CA 94066-0720. All written statements must be postmarked by August 20, 1990, to become part of the official record.

Dated: July 2, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90-15877 Filed 7-9-90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES90-36-000, et al.]

Utilicorp United Inc., et. al; Electric rate, Small Power Production, and Interlocking Directorate Filings

July 2, 1990.

Take notice that the following filings have been made with the Commission:

1. Utilicorp United Inc.

[Docket No. ES90-36-000]

Take notice that on June 22, 1990, UtiliCorp United Inc. ("Applicant") filed and application with the Federal Energy Regulatory Commission ("Commission") pursuant to Section 204 of the Federal Power Act seeking authority to issue up to and including 100,000 shares of common stock, par value $1.00 per share, pursuant to the UtiliCorp United Inc. 1990 Non-Employee Director Stock Plan and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: July 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER87-612-003]

Take notice that on June 12, 1990, Niagara Mohawk Power Corporation (Niagara) tendered for filing an informational filing detailing the calculation of an adjustment to the settlement rates agreed in the Settlement and a related refund in the above referenced docket.

Comment data: July 16, 1990, in accordance with Standard Paragraph E end of this notice.

3. Central Maine Power Company

[Docket No, ER90-367-000]

Take notice that Central Maine Power Company (CMP) on June 28, 1990, tendered for filing an amendment to its May 14, 1990 filing of proposed changes in its FERC Electric Tariff, 11th Revised Volume No. 1, Wholesale Electric Rate for Other Utilities. This amendment submits CMP's breakdown of its cost of capital and its Cost of Service Study.

Comment date: July 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. UtiliCorp United Inc.

[Docket No. ES90-35-000]

Take notice that on June 22, 1990, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to Section 204 of the Federal Power Act seeking authority to issue up to and including 250,000 shares of common stock, par value $1.00 per share, pursuant to the 1986 UtiliCorp United Inc. Employee Stock Purchase Plan and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: July 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas & Electric Company

[Docket No. ER90-473-000]

Take notice that on June 28, 1990, Pacific Gas & Electric Company (PG&E) tendered for filing an agreement dated March 13, 1990, as amended dated June 20, 1990, between PG&E and the Bonneville Power Administration (BPA) for the exchange of energy from PG&E for capacity from BPA (Agreement). Under the Agreement, BPA will provide up to 400 MW of capacity during June through September 1990. PG&E will return the associated energy normally on the day following delivery. In addition, PG&E will provide BPA with 208,000 MWh of exchange energy between September and December 1990.

Copies of this filing have been served upon BPA and the California Public Utilities Commission.

Comment date: July 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

Wisconsin Power and Light Company

[Docket No. ER90-319-000]

Take notice that on June 28, 1990, Wisconsin Power and Light Company (WPL) tendered for filing supplemental filings relating to three agreements between WPL and Wisconsin Power, Inc. System (WPPI) previously filed by WPL on April 12, 1990.

The agreements provide: (1) for WPL to supply WPPI with various amounts of Firm Power during the period of June 1, 1990 through May 31, 1995; (2) for WPL to make General Purpose Energy available to WPPI at times and in quantities as mutually agreed upon; and (3) for WPL to make both Firm and Non-Firm Energy available to WPPI, in return for Energy Rights from a Combustion Turbine to be installed by WPPI.

The supplemental filing purports to address various concerns raised by Commission staff by specifying price caps which would apply in various situations to sales under the three agreements.

WPL requests expedited consideration of the filing and an effective date of May 1, 1990 so that the Parties may immediately begin achieving mutual economic benefit. Accordingly, WPL requests waiver of the Commission's notice requirements, to the extent necessary, to allow the filing to be posed (in the case of the Combustion Turbine Agreement) more than 120 days prior to the initial date of service.

Comment date: July 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ES90-34-000]

Take notice that on June 22, 1990, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authority to issue up to and including 1 million shares of common stock, par value $1.00 per share, pursuant to the Dividend Reinvestment and Stock Purchase Plan and for exemption from the competitive bidding and negotiated placement requirements.

Comment Date: July 25, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER90-472-000]

Take notice that on June 26, 1990, Florida Power & Light Company (FP&L) tendered for filing a Notice of Cancellation of service to the City of Lake Worth under Rate Schedule FERC No. 103 with a requested effective date of June 20, 1990.

Comment date: July 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Warbasse-Cogeneration Technologies Partnership L.P.

[Docket No. F88-438-001]

On June 20, 1990, Warbasse-Cogeneration Technologies Partnership L.P. (Applicant), of 900 Park Avenue, Suite 19E, New York, New York 10021, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The dual-fuel topping-cycle cogeneration facility is located in Kings County, Brooklyn, New York. The final configuration of the facility will comprise of three boilers and two steam turbine generator units (all were in operation since the mid 1960's); the certified facility (*See,* QF88-438-000) which includes three natural gas and three diesel engine generators; and, the proposed addition which will include the new dual-fuel turbine generators. Thermal energy recovered from the facility will be sold to an unaffiliated entity, the Amalgamated Warbasse Houses, Inc., for space heating and cooling and domestic hot water production for a housng project. The primary energy sources of the facility will be natural gas. No. 2 fuel oil will be used as a back up or supplemental fuel. The expansion of the facility is expected to begin in fall 1990.

The certification of the original application was issued on August 9, 1988 (44 FERC ¶ 62,115). The recertification of the instant application is requested due to an ownership change, an increase in the electric power production capacity from 6.9 MW to 49 MW, and a change in the configuration of the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motin to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15897 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2545-015 Washington]

Washington Water Power Co.; Notice of Availability of Environmental Assessment

July 2, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the constructed Spokane River Project at the Monroe Street Development located on the Spokane River in Stevens, Lincoln, and Spokane Counties, near Spokane, Washington and has prepared an Environmental Assessment (EA) for the amendment project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the amended project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308 of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15898 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[P-2854-018]

Notice of Application Filed with the Commission

June 26, 1990.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2854-018.

c. *Date Filed:* June 25, 1990.

d. *Applicant:* City of Vidalia, Louisiana, and Catalyst Old River Hydroelectric Limited Partnership.

e. *Name of Project:* Old River Project.

f. *Location:* On the Mississippi and Old Rivers, in Concordia Parish, Louisiana.

g. *Filed Purauant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Ms. Arlene Pianko Groner, 1825 Eye Street, NW., Washington, DC 20006, (202) 835-7552.

i. *FERC Contact:* Mary Golato (202) 357-0804.

j. *Comment Date:* July 20, 1990.

k. *Description of Project:* The City of Vidalia, Louisiana, and the Catalyst Old River Hydroelectric Limited Partnership (the Partnership) propose to transfer project property between the applicants and the owner-trustee, and to partially transfer the license to include the owner-trustee as a co-license, in order to permit the Partnership to sell and lease back the project and to lease and sublease back related facilities.

l. *This notice also consists of the following standard paragraphs:* B and C.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," COMPETING APPLICATIONS," "PROTEST" or

"MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell,

Secretary.

[FR Doc. 90–15899 Filed 7–9–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–1615–000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filingss have been made with the Commission:

1. CNG Transmission Corp.

[Docket No. CP90–1615–000]

June 29, 1990.

Take notice that on June 25, 1990, CNG Transmission Corporation (CNG), 445 West Maine Street, Clarksburg, West Virginia 26301, filed in Docket No. CP90–1615–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to The Peoples Natural Gas Company (Peoples), its existing jurisdictional customer, to reassign volumes of natural gas currently delivered from two existing delivery points and to construct and operate appurtenant facilities, under CNG's blanket certificate issued in Docket No. CP82–537–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG states that it proposes to add one new delivery point on its 30-inch Line No. TL–469, near Stull Gate, in the Cranberry Township, Pennsylvania area, to be known as the Stull Connection. In addition, CNG states it plans to reassign volumes of natural gas currently delivered to Peoples at the existing Mars and Gibsonia Connections, for delivery to Peoples via the Stull Connection. CNG indicates that it would construct and operate the facilities necessary to deliver the natural gas to Peoples at the new connection, including measurement and pressure regulating facilities. The estimated cost for all delivery facilities required for the Stull Connection is $583,000, it is stated, CNG asserts that Peoples has agreed to reimburse CNG for the cost of constructing all associated facilities. CNG states that a maximum daily quantity of 50,000 dekatherms of natural gas would be delivered to Peoples at the Stull Connection.

CNG states that Peoples has requested the delivery point and additional sales quantities to meet the total current and future requirements of its customers in the vicinity of Cranberry Township, Pennsylvania, and that its requirements-type service to Peoples, under Rate Schedule RQ of its FERC Gas Tariff, Original Volume No. 1, permits such deliveries. CNG indicates that Peoples has advised it that the volumes it will purchase at the Stull Connection would be used in its system supply, to meet it market requirements in Butler County and the surrounding area.

Comment date: August 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin, Interstate Pipeline Company

[Docket Nos. CP82–487–031]

July 2, 1990.

Take notice that on June 11, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing certain revised tariff sheets to Original Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that the revised tariff sheets were filed in compliance with the Commission's "Order Affirming in Part and Modifying in Part Initial Decision" issued July 11, 1989, "Order Granting in Part and Denying in Part Requests for Rehearing and Clarification" issued March 8, 1990 and "Order Clarifying Prior Order, Denying Rehearing, and Accepting in Part and Rejecting in Part Compliance Filing" issued May 25, 1990, directing Williston Basin to file revised tariff sheets for the period January 1, 1985 through May 1, 1986 as more fully described in the filing.

Comment date: July 10, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90–1595–000]

July 2, 1990.

Take notice that on June 20, 1990, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90–1595–000 an application pursuant to section 7(b) of the Natural Gas Act for an order authorizing Northern to partially abandon firm sales service to twenty-three utilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authority to partially abandon firm sales service to the twenty-three utilities listed in the attached Appendix A as a result of the utilitities converting a portion of their firm sales entitlements to firm transportation effective December 1, 1989. Northern states the utilities have converted 410,583 Mcf of natural gas per day, of which 395,041 Mcf per day is Rate Schedule CD–1 service and 15,542 Mcf per day is Rate Schedule PL–1 service.

Comment Date: July 23, 1990, in accordance with Standard Paragraph F at the end of this notice.

4. United Gas Pipe Line Co.

[Docket No. CP90–1581–000, Docket No. CP90–1582–000, Docket No. CP90–1583–000, Docket No. CP90–1584–000, Docket No. CP90–1585–000]

July 2, 1990.

Take notice that on June 20, 1990, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under

[1] These prior notice requests are not consolidated.

§ 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment Date: August 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket Number	Applicant	Shipper name	Peak day [1] avg. annual	Points of—		Start up date, rate schedule	Related [2] Dockets
				Receipt	Delivery		
CP90-1581-000 (6-20-90)	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251.	Graham Energy Mktg. Corp.	123,600 123,600 45,114,000	Offshore LA, LA, TX, MS	AL, FL, LA, MS	5-10-90 ITS	CP88-6-000 ST90-3257-000
CP90-1582-000 (6-20-90)	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251.	Phibro Distributors Corp ...	309,000 309,000 112,785,000	Offshore LA, AL, LA, TX, MS	LA, TX, FL, MS	3-28-90 ITS	CP88-6-000 ST90-3018-000
CP90-1583-000 (6-20-90)	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251.	Equitable Resources Mktg. Co.	257,500 257,500 93,987,500	Offshore LA, LA, TX	Offshore TX, TX LA, MS	4-24-90 ITS	CP88-6-000 ST90-3259-000
CP90-1584-000 (6-20-90)	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251.	Seagull Mktg. Services, Inc.	515,000 515,000 187,975,000	Offshore LA, LA, MS, TX, AL	LA, TX AL, MS FL	5-9-90 ITS	CP88-6-000 ST90-3310-000
CP90-1585-000 (6-20-90)	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77251.	Seagul Mktg. Services, Inc.	515,000 515,000 187,975,000	Offshore LA, LA, MS, TX, AL	LA, TX AL, MS FL	5-9-90 ITS	CP88-6-000 ST90-3309-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15900 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-24-000]

Commonwealth Atlantic Limited Partnership; Issuance of Commission Order and Comment Period

July 3, 1990.

Take notice that on June 28, 1990, the Federal Energy Regulatory Commission issued on Order Accepting Rates For Filing, Noting And Granting Interventions, And Granting Waivers. On October 17, 1989, as supplemented on January 17, 1990, Commonwealth Atlantic Limited Partnership (Commonwealth) submitted for filing a Power Purchase and Operating Agreement between Commonwealth and Virginia Electric Power Company (Virginia Power) for the sale of energy and capacity to Virginia Power from Commonwealth's planned 240 MW gas-fired peaking facility. Commonwealth stated that it is an independent power producer (IPP) which has no market power in Virginia Power's service territory. Commonwealth also requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Commonwealth.

The Commission's June 28, 1990 order in Ordering Paragraphs (E), (F) and (G) reads as follows:

(E) Within thirty (30) days the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Commonwealth should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)).

(F) Absent a request for hearing within the period set forth in Ordering Paragraph (E) above, Commonwealth is authorized to issue securities and assume obligations or liabilities as

guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Commonwealth's issuances of securities or assumption of liability.

Notice is hereby given that the deadline for filing a motion to intervene or protest, as set forth above, is July 28, 1990.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15901 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-23-000]

Eastern Shore Natural Gas Co., Proposed Changes in FERC Gas Tariff

July 2, 1990.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 29, 1990 certain revised tariff sheets included in appendix A attached to the filing. The tariff sheets are proposed to be effective August 1, 1990.

ESNG states that such tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and § 21.2 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth thereon reflect a increase of $0.0402 per dt in the Commodity Charge and a decrease of $0.0054 per dt in the Demand Charge as measured against ESNG's previously scheduled PGA filing in Docket No. TQA90-2-23-001 effective May 1, 1990 as filed in ESNG's compliance filing in Docket Nos. RP89-164-000,001; TA90-1-23-000, et. al..

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15902 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-4-34-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 2, 1990.

Take notice that on June 29, 1990, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets to be effective August 1, 1990:

FERC Gas Tariff, First Revised Volume No. 1
23rd Revised 37th Revised Sheet No. 8
FERC Gas Tariff, Original Volume No. 2
21st Revised 59th Revised Sheet No. 128

Reason for Filing

The above-referenced tariff sheets are being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff, First Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Annual PGA filing, Docket No. TA90-1-34-000 effective May 1, 1990.

FGT states that the effect of the purchased gas cost being filed represents a decrease of .592¢/therm for Rate Schedules G and I and .17¢/Mcf for Rate Schedule T-3 as measured against FGT's Annual PGA filing in Docket No. TA90-1-34-000 effective May 1, 1990.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15903 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP90-109-002]

Pacific Gas Transmission Co., Compliance Filing

July 2, 1990.

Take notice that on June 29, 1990, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance certain tariff sheets to be included in its Second Revised Volume No. 1 of its FERC Gas Tariff.

The above tariff sheets reflect the elimination of the cost-of-service tariff provisions for PGT's recovery of purchased gas costs in accordance with the Commission's order of May 30, 1990, in this docket. That order accepted and suspended PGT's proposed tariff sheets, to be effective November 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15904 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-139-000]

Southern Natural Gas Co., Proposed Changes to FERC Gas Tariff

July 2, 1990.

Take notice that Southern Natural Gas Company (Southern) on June 29, 1990, tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Volume No. 2, and First Revised Volume No. 2A. The aforesaid tariff sheets reflect an increase in Southern's jurisdictional sales and transportation rates of $58 million annually attributable to increases in most of the components of Southern's cost of service and declining throughput.

Southern states that it has also employed methods of cost classification, allocation, and rate design in the development of its proposed rates which address the goals of allocative and productive efficiency set forth in the Commission's Policy Statement on Rate Design issued in Docket Nos. PL89-2-000, *et al.*, including utilization of one-part demand charges and seasonal demand and commodity rates.

Southern States that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers, shippers, and interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before July 11, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15905 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-58-000]

Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1990.

Take notice that on June 29, 1990, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the below listed tariff sheet to be effective August 1, 1990.

First Revised Sheet No. 4

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustment). Specifically, First Revised Sheet No. 4 reflects an average cost of gas of 174.11¢/Mcf, representing a current adjustment decrease of 14.48¢/Mcf. The tariff sheet also reflects a surcharge adjustment reduction of .19¢/Mcf and a proposed total rate of 202.57¢/Mcf (at 14.65 psia).

TGPL states that copies of the were served upon TGPL's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15906 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-18-000]

Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

July 2, 1990.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 29, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Revised Twenty-eighth Revised Sheet No. 10

Second Revised Twenty-eighth Revised Sheet No. 10A

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to the Quarterly Rate Adjustment provision of the Purchased Gas Adjustment clause of its FERC Gas Tariff and are proposed to be effective August 1, 1990. Texas Gas further states that the proposed tariff sheets reflect a commodity rate decrease of $(.2424) per MMBtu, a D-1 demand rate decrease of $(.01) per MMBtu, and a D-2 demand rate increase of $.0003 per MMBtu from the rates set forth in the regularly scheduled PGA filed March 30, 1990 (Docket No. TQ90-2-18).

Texas Gas states that copies of the filing were served upon Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.14 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before July 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15907 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR90-2-000]

Trans Alaska Pipeline System; Notice of Complaint

July 2, 1990.

Take notice that on June 1, 1990, Conoco Inc. (Conoco) and Oxy U.S.A. Inc. (Oxy) filed a compliant against the Trans Alaska Pipeline System (TAPS) Carriers pursuant to sections 9 and 13(1) of the Interstate Commerce Act, (49 U.S.C. 9, 13(1)), and to rule 206 of the rules of practice and procedure of the Federal Energy Regulatory Commission (18 CFR 385.206). Conoco and Oxy state that TAPS carriers have shipped, or allowed to be shipped, natural gas liquids through the TAPS in a manner that violates the governing tariffs applicable to shipments on that system. Conoco and Oxy have also claimed that the TAPS tariffs, to the extent they permit shipments of commingled natural gas liquids without appropriate gravity or other value adjustments, are unjust, unreasonable, and unduly discriminatory.

Conoco and Oxy state that as a result of the shipment of natural gas liquids through the TAPS without making appropriate gravity adjustments, the

carriers are engaging in an unjust, unreasonable, and unduly discriminatory practice in contravention of the provisions of the Interstate Commerce Act. Conoco and Oxy state that they have suffered injuries for which they seek the statutory reparations remedy.

Conoco and Oxy state that they are filing this complaint under section 13(1) of the Interstate Commerce Act to afford a full and complete remedy for any practices which the Commission determines are unjust, unreasonable or unduly discriminatory.

Conoco and Oxy are requesting that the Commission, pursuant to sections 9 and 13(1) of the Interstate Commerce Act, incorporate this complaint in the ongoing proceedings under Docket Nos. OR89-2-000.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR, 385.214, 385.211 (1989)]. All such motions or protects should be filed on or before July 26, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before July 26, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15908 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-4-82-000]

Viking Gas Transmission Co.; Notice of Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 2, 1990.

Take notice that on June 29, 1990, Viking Gas Transmission Company (Viking) filed Seventh Revised Sheet No. 6 to Original Volume No. 1 of its FERC Gas Tariff, to be effective August 1, 1990.

Viking states that the current Purchased Gas Cost Rate Adjustments reflected on Seventh Revised Sheet No. 6 consist of a ($.1149) per dekatherm adjustment applicable to the gas component of Viking's sales rates, and a $1.24 per dekatherm adjustment applicable to the Demand D-1 component.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before July 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-15909 Filed 7-9-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3807-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instruments.

DATES: Comments must be submitted on or before August 9, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP for Vinyl Chloride (subpart F)—Information Requirements. (ICR #0186.05; OMB #2060-0071). This is a reinstatement of a previously approved collection.

Abstract: Owners or operators of regulated facilities must submit to EPA, or the delegated states, an application for approval of construction, modification, and start-up of their plants. They may submit a waiver for the initial emission test report. Owners or operators of polyvinyl chlorade (PVC) plants must submit quarterly reports of reactor opening losses, and stripping residuals. Owners or operators of all the regulated facilities are required to submit quarterly reports of excess emissions. They must also maintain records of leaks detected by vinyl chloride monitors, vinyl chloride emissions as measured by continuous emission monitors, and operating parameters (pressure and temperature) of the PVC reactor. They must also report within 10 days of each relief valve and manual vent discharge. EPA, or the delegated states, use these data to determine the compliance status of sources, and to target inspections.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 75 hours per response for reporting, and 143 hours per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners and operators of ethylene dichloride plants, vinyl chloride monomer plants, and PVC plants.

Estimated No. of Respondents: 44.

Estimated Total Annual Burden on Respondents: 16,159 hours.

Frequency of Collection: Quarterly and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460.

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20530.

Dated: June 27, 1990.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 90-16018 Filed 7-9-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3807-6]

Ambient Air Monitoring Reference and Equivalent Methods, Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on May 29, 1990, the Environmental Protection Agency received an application from Rupprecht & Patashnick Co., Inc., 8 Corporate Circle, Albany, New York 12203, to determine if their TEOM Series 1400 PM-10 Monitor should be designated by the Administrator of the EPA as an equivalent method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 90-16019 Filed 7-9-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3807-2]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT); Meetings

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of two meetings held by the Focus Group on Environmental Permitting of the Technology Innovation and Economics (TIE) Committee: a public Fact Finding meeting and a Focus Group meeting. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The TIE Committee and NACEPT are seeking ways to enhance the effectiveness of the environmental regulatory system in the U.S., and will recommend to the Administrator promising improvements that may be identified in NACEPT Fact Finding and deliberative activities.

The Fact Finding meeting will convene on August 8, 1990, from 8:30 a.m. to 4:30 p.m. at the Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036. The open meeting will convene on August 9, 1990, from 9 a.m. to 5 p.m. at the same location.

The Focus Group on Environmental Permitting is examining the relationship between the introduction of new technologies for environmental purposes and governmental permitting and compliance processes. The Focus Group is also examining the impact of regulatory "glitches"—regulatory requirements that have an unplanned, adverse effect on technology innovation and diffusion—on the development and introduction of new technologies for environmental purposes. The term "new technologies for environmental purposes" is defined to include the development, testing, and commercial application of all environmentally beneficial devices, whether for pollution prevention, pollution control, remediation, or environmental measurement.

The Focus Group members share the concern that environmental permitting and compliance systems, and associated regulatory processes, at the federal, state, and local levels create both incentives and disincentives for the process of technology innovation for environmental purposes. Issues being considered by the Focus Group include the following:

- Identifying the major interested parties and their motivation with respect to the decision to invest in developing or applying an innovative technology for pollution prevention or for environmental control or cleanup.
- Understanding the resource and timing impacts on technology innovation and diffusion of permitting reviews by federal, state, and local authorities.
- The importance to technology innovation and diffusion of flexibility in permitting requirements and of cross-media consideration of environmental impacts of innovative technology.
- The importance to technology innovation and diffusion of flexibility in compliance practices.
- Measuring the potential to create incentives for pollution prevention in permitting and compliance systems.
- Gaining perspective on the concerns of the general public for technology innovation for environmental purposes.

The Focus Group invites individuals, firms, and other organizations who can shed light on these subjects and issues to provide statements at the public meeting on August 8. Appropriate statements should include at least the following information:

1. The name, relevant affiliation, address, and phone number for the potential respondent.

2. Comments about any positive and negative aspects of the permitting, compliance, or regulatory processes that the potential respondent believes affect technology innovation for environmental purposes.

3. Suggestions of improvements that could make environmental permitting, compliance, and regulatory processes more efficient with respect to technology innovation for environmental purposes, without diminishing the benefits of environmental protection for which these processes are intended.

4. Illustration of the significance of these comments and suggestions using specific, real case studies, based on the direct experience of the potential respondent, that of their organization, or that of their clients or other associates.

Members of the public wishing to make comments at the Washington meeting are invited to identify themselves in writing to David R. Berg, Director of the Technology Innovation and Economics Committee, no later than July 31, 1990. An outline of the points to be made must be provided by that date, and a complete text is preferred. Please send comments to David R. Berg (A-101 F6), EPA, room 115, 499 South Capitol Street, SW., Washington, DC 20460.

The August 8, Fact Finding meeting will be open to the public. All potential respondents are assured that their written comments will be received and reviewed by the Focus Group. It is hoped that time will be found for all respondents to make presentations at the meeting. First priority for making oral presentations will be given to those comments that are most responsive to the four criteria listed above, as evaluated by the Focus Group and the TIE Committee staff.

The purpose of the open Focus Group meeting on August 9, 1990, will be to review the information gathered at the August 8 Fact Finding meeting and at a similar meeting held in San Francisco on May 16. The Focus Group will also evaluate its progress in identifying significant positive and negative impacts of environmental permitting and compliance systems, and in examining potential remedies to any identified impediments.

Additional information may be obtained from David R. Berg or Morris Altschuler at the above address, by calling 202-382-3153, or by written request sent by fax (202-245-3882).

Dated: June 20, 1990.

Robert Hardaker,

Acting NACETT Designated Federal Official.

[FR Doc. 90-15921 Filed 7-9-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3807-5]

Batesville Rubber Fire Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Batesville Rubber Fire Site, Batesville, Arkansas, with GenCorp and Seilon, Inc. EPA will consider public comments on the propsed settlement for 30 days. EPA may withdraw from or modify the proposed settlement, should such comments disclose facts or considerations which indicate the propsed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Doretha Lemuel, Cost Recovery Section, Hazardous Waste Management Division, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Written comments may be submitted to the person above by 30 days from the date of publication.

Dated: June 26, 1990.

Robert E. Layton, Jr., P.E.,

Regional Administrator, U.S. EPA-Region 6.

[FR Doc. 90-16020 Filed 7-9-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL: 3807-3]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection, Rollins Environmental Services of Louisiana, Inc., Plaquemine, LA

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision of petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Rollins Environmental Services of Louisiana, Inc. (RES), for the Class I injection well located at Plaquemine, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by RES, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection well at the Plaquemine, Louisiana facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued March 12, 1990. A public hearing was held April 17, 1990, and a public comment period ended on April 25, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of June 26, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location:

Environmental Protection Agency,
Region 6,
Water Management Division,
Water Supply Branch (6W-SU),
1445 Ross Avenue,
Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

Myron O. Knudson,

Director Water Management Division (6W).

[FR Doc. 90-15922 Filed 7-9-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3808-2]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; ARCO Chemical Company, Channelview, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on Petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to ARCO Chemical Company, for the Class I injection wells located at Channelview, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constitutents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection of ARCO Chemical Company, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Channelview, Texas facility specifically identifed in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued April 25, 1990. A public hearing was held May 24, 1990, and a public comment period ended on June 8, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of June 29, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location:

Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90-16021 Filed 7-9-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. New Song Communications, Inc	Virginia Beach, VA	BPH-880505MN	90-323.
B. HS Communications, Inc	....do	BPH-880505MZ	
C. Ewell Media Company Limited Partnership	....do	BPH-880505NA	

Applicant	City/State	File No.	MM Docket No.
D. The Chesapeake Bay FM Broadcasters Limited Partnership	do	BPH-880505NH	
E. Virginia Beach FM Radio, Limited Partnership	do	BPH-880505NM	
F. Stacy C. Brody	do	BPH-880505NO	
G. Pamela R. Jones	do	BPH-880505NR	
H. VPC, Ltd	do	BPH-880505NS	
I. First Century Broadcasting of Virginia, Inc	do	BPH-880505NT	
J. Chesapeake Media Communications Corp	do	BPH-880505NZ	
K. Regional Broadcasting Limited Partnership	do	BPH-880505OB	
L. Sandfiddler Spectrum Corp	do	BPH-880505OX	
M. Craig L. Siebert	do	BPH-880505PM	
N. Intracoastal Airwaves Limited Partnership	do	BPH-880505PN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. City Coverage-FM—All Applicants
2. (See Appendix)—A
3. (See Appendix)—A
4. (See Appendix)—A
5. (See Appendix)—A
6. (See Appendix)—D
7. Financial—I, M
8. Air Hazard—A, D, E, G, I, J, N
9. Comparative—All Applicants
10. Ultimate—All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to A's (Song) application.

3. To determine whether A's (Song) organizational structure is a sham.

4. To determine whether A (Song) violated Section 1.65 of the Commission's Rules, and/or lacked candor, by failing to amend its application to notify the Commission of the dismissal with prejudice of an application in which one of its principals had an ownership interest.

5. To determine, from the evidence adduced pursuant to Issues 2 through 4 above, whether A (Song) possesses the basic qualifications to be a licensee of the facilities sought herein.

6. To determine whether D (Bay) violated § 1.65 of the Commission's Rules by failing to amend its application to report the dismissal with prejudice of an application in which one of its principals had an ownership interest and by failing to provide current information regarding other broadcast interests.

[FR Doc. 90-16032 Filed 7-9-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: New Collection.

Title: Survey of Fire Apparatus Driver Training Programs.

Abstract: One-fourth of firefighters killed each year die in vehicle accidents. By gathering information from fire departments to produce case studies of exemplary programs, the project will produce examples for other departments and a gauge of the "high-end" of driver training available.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 105.

Number of Respondents: 35.

Estimated Average Burden Hours Per Response: 3.

Frequency of Response: One time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: June 29, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-15974 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-871-DR]

Amendment to Notice of a Major Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-871-DR), dated June 22, 1990, and related determinations.

DATED: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Illinois, dated June 22, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 22, 1990:

The counties of Cass, Richland, and Tazewell for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15573 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-869-DR]

Amendment to Notice of a Major Disaster Declaration; Indiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA-869-DR), dated June 4, 1990, and related determinations.

DATED: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective June 28, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15970 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-868-DR), dated May 26, 1990, and related determinations.

DATED: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Iowa, dated May 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 26, 1990:

The counties of Audubon, Iowa, and Washington for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15967 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-868-DR), dated May 26, 1990, and related determinations.

DATED: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Iowa, dated May 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 26, 1990:

The counties of Franklin and Hardin for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15968 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-CZ-M

[FEMA-868-DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-868-DR), dated May 26, 1990, and related determinations.

DATED: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Iowa, dated May 26, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 26, 1990:

The counties of Calhoun, Clark, Hamilton, and Marion for Individual Assistance;

The counties of Audubon, Boone, Carroll, Iowa, Jasper, Johnson, and Shelby for Public Assistance (previously designated for Individual Assistance); and

The counties of Keokuk, Mahaska, Monroe, and Wapello for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert G. Chappell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15969 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

The counties of Fairfield, Jackson, Lawrence, Muskingum, Pike, and Vinton for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15971 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective June 25, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15972 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-867-DR]

Amendment to Notice of a Major Disaster Declaration; Missouri

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA-867-DR), dated May 24, 1990, and related determinations.

DATED: June 29, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Missouri, dated May 24, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 24, 1990:

The counties of Bates, Boone, Callaway, Johnson, and Moniteau for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15966 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATED: June 27, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC. 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

The counties of Hunt and Rains for Individual Assistance and Public Assistance; and

The counties of Cherokee, Fannin, Lamar, and San Jacinto for Public Assistance. [These counties were previously designated for Individual Assistance.]

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15964 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-863-DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major diaster for the State of Texas (FEMA-863-DR), dated May 2, 1990, and related determinations.

DATED: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 2, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 2, 1990:

Dallas County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert G. Chappell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-15965 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-21-M

Community Rating System

AGENCY: Federal Insurance Administration, Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Federal Insurance Administration (FIA), the Directorate in the Federal Emergency Management Agency (FEMA) responsible for the administration of the National Flood Insurance Program (NFIP) has developed a Community Rating System (CRS) as a voluntary part of the NFIP. A community will remain in good standing with the NFIP even if the community decides not to particpate in the CRS. FIA will begin to accept applications on October 1, 1990. FIA is seeking additional information on floodplain management standards for special hazard areas; for credit to address the preservation of wetlands and natural floodplain functions; on other community activities which commentors believe should be eligible for credit; and on other procedural and operational matters.

The goals of the CRS are to encourage, by the use of the CRS classification and flood insurance premium adjustments, community and State activities beyond those required by the NFIP to reduce flood damage, facilitate accurate insurance rating, and promote the awareness of the availability of flood insurance. There are ten community CRS classifications. A community that has not certified that it performs a sufficient number of activities to attain at least a Class 9 classification under CRS is classified as Class 10. A community that certifies it

performs sufficient activities will be classified as Class 9 based upon the community's certification. To be classified as Class 8 through 1, a field classification survey must be performed by a CRS specialist to verify the CRS classification.

Under the CRS, community CRS classification and flood insurance premium credits are available in those communities that undertake selected additional activities that reduce flood damage and/or that increase the number of flood insurance policies purchased in the community. Not only does such a system properly reward those communities that are doing more than the required minimum to protect their residents from flood damage and the adverse consequences of sizeable uninsured flood damage to their buildings and contents, it encourages communities to initiate new flood protection and education activities. The selection, definition and relative importance of the activities included in this system have been developed and reviewed by many of the nation's leading experts on floodplain management. It is intended that these activities will be further defined and expanded in the future as experience with the CRS develops practical knowledge on how better to measure effective floodplain management practices.

Any flood insurance premium credits will be determined in accordance with actuarial principles pursuant to Sections 1307 and 1308 of the National Flood Insurance Act, 42 U.S.C. section 4001, *et seq.*

The FIA will begin accepting applications on October 1, 1990. The community CRS classification and flood insurance premium credits will be effective for all new and renewal flood insurance policies in place on or after October 1, 1991 in those communities filing completed applications on or before December 15, 1990. Community CRS applications filed after December 15, 1990 will be processed for flood insurance policies in place on and after October 1 of the year at least ten months after the date of receipt.

The information collection requirements in the CRS have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned control number 3067-195 (expiration date June 30, 1993).

EFFECTIVE DATE: October 1, 1990.

DATES: Comments are due on or before October 9, 1990.

ADDRESSES: Please send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT:

Francis V. Reilly, Deputy Administrator, (202) 646-2782.

James Ross MacKay, Senior Policy Officer, (202) 646-2717.

Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administration (FIA) has created a Community Rating System (CRS) as an integral part of the National Flood Insurance Program (NFIP). The goals of the CRS are to encourage, by the use of flood insurance premium adjustments, community and State activities beyond those required by the NFIP to reduce flood losses, facilitate accurate insurance rating, and promote the awareness of flood insurance.

Background

Since 1968 the NFIP has provided federally backed flood insurance to encourage communities to enact and enforce floodplain regulations. The program has been very successful in helping flood victims get back on their feet. There are over 2.1 million policies in force. Over the last ten years, 350,000 insurance losses have been paid, for a total of $2.5 billion.

In order to be covered by a flood insurance policy, a property must be in a community that participates in the NFIP. To qualify, a community adopts and enforces a floodplain management ordinance to regulate proposed development in flood hazard areas. The objective of the ordinance is to ensure that such development will not aggravate existing flooding conditions and that new building will be protected from future flood damage. To date, nearly 18,000 communities in the United States participate.

The NFIP has been successful in requiring new buildings to be protected from damage by the 100-year flood. However, the program has few incentives for communities to do more than enforce the minimum buildings protection standards. Flood insurance rates are the same in all participating communities, even though some do much more than regulate construction of new buildings to the national standards.

Until now, the program did little to recognize or encourage community activities to reduce flood damages to existing buildings, to manage development in areas not mapped by the NFIP, to protect new buildings beyond the minimum NFIP protection level, to help insurance agents obtain flood data, or help peple obtain flood insurance. Because these activities can have a great impact on the insurance premium base, flood damages, flood insurance claims, and Federal disaster assistance payments, the FIA is implementing the Community Rating System (CRS).

Under the CRS, flood insurance premium credits are available in those communities that undertake selected additional activities that reduce flood losses and/or that increase the number of flood insurance policies. Not only does such a system properly reward those communities that are doing more than the minimum to protect their residents from flood losses, it will encourage communities to initiate new flood protection activities.

Any flood insurance premium credit will be determined pursuant to sections 1307 and 1308 of the National Flood Insurance Act.

Operation

Community application for CRS credit is voluntary. Any community in good standing as a participant in the NFIP may apply for a community-wide flood insurance premium rate credit. The applicant community submits documentation that it is implementing one or more of the activities the CRS recognizes.

Some of the activities may be implemented by the State or a regional district rather than at the local level. For example, some States have disclosure laws that may meet the credit criteria. In such cases, any community in those States or districts could receive an insurance premium credit if the community applies for the CRS and if the State or district program is, in fact, being implemented in the community.

The regional office of the Federal Emergency Management Agency (FEMA) and the State flood insurance coordinator will review and comment on the application. The FIA will verify the information and the community's implementation of the activities. The Federal Insurance Administrator sets the credit to be granted and notifies the community, the State, the insurance companies, and other appropriate parties.

Residents of a Class 1 community receive the largest credit. A community is automatically in Class 10 unless it applies to participate in the CRS and it shows that the activities it is implementing warrant a lower class number.

FIA's CRS specialists will visit the community to verify that it is implementing the activities described in the application. The credit points for the application will be calculated to

determine whether the community can be recommended for a better classification.

The community's activities and performance are reviewed periodically. If it is not properly or fully implementing the credited activities, the credit points and, possibly, its credit classification, will be revised. A community may add or drop creditable activities each year. Credit criteria for each activity may also change as more experience is gained in implementing, observing, and measuring the activities.

No fee is charged for a community to apply or participate in the CRS. Because there may be a cost to implement the creditable activities, some communities may be concerned whether the cost of implementing an activity will be offset by the flood insurance premium credits. It is important to note that reduction in flood insurance rates is only one of the rewards communities receive from undertaking the activities credited under the community rating system. Others include increased public safety, reduction of damages to property and public infrastructure, avoidance of economic disruption and losses, reduction of human suffering, and protection of the floodplains.

Application

Application for the Community rating System credit is voluntary. If a community does apply, it is required to submit all of the application documents needed, including application for credit under Activity Elevation Certificate. Repetitive loss communities are also required to apply for credit under Activity Repetitive Loss Projects.

Prerequisites to Apply: An applicant community must be in the Regular Phase of the NFIP and must be in full compliance in the NFIP at the time of the application. If a community is unsure of its standing in the NFIP, it should contact its FEMA regional office.

The community must designate a CRS contact to coordiante the application work of the various departments and offices performing the activities for which credit is being applied. This person serves as the liaison between the community and FEMA's CRS specialist on matters relating to application and verification.

Application Documents: Application Worksheets and the *CRS Commentary* (which has instructions on how to complete them) are published separately. They are used by the applicant to ensure that the application is complete and to calculate credit points. No credit is given if a community's application is incomplete. Such documents and worksheets may be obtained from the FEMA regional offices.

Documentation required includes a notification to other agencies (such as the State NFIP coordinator, the community's regional planning agency, etc.), certification that the community is maintaining all required flood insurance coverage on its buildings, and worksheets and accompanying documentation for each activity for which credit is being requested. Every community must apply for Activity Elevation Certificate, and every repetitive loss community must apply for Activity Repetitive Loss Projects. The application shall be certified by the community's chief executive officer. The application shall be sent to the appropriate FEMA regional office. The Application Worksheets and CRS Commentary have been submitted to the Office of Management and Budget for approval.

Application Calendar:

December 15, 1990—Applications due to the FEMA regional office.

February 1, 1991—Comments due from State and regional agencies in response to the Notice of Application.

July 1, 1991—FIA advises the community if there are sufficient points for it to be designated a Class 9. During the next 13 months, a CRS specialist will visit the community to determine the verified CRS classification (1–9) to be assigned.

October 1, 1991—The Class 9 credits take effect for all new and renewed flood insurance policies in the community.

December 15, 1991—Applications due to FEMA regional office. (The annual application, review, and verification cycle is repeated).

July 1, 1992—FIA advises communities that applied in 1990 if there are sufficient points for them to be designated Class 1–8. Communities that applied in 1991 are told if they are designated Class 9.

October 1, 1992—Premium rates for new and renewal flood insurance policies effective after this date reflect the community's verified CRS classification.

Community Rating System Creditable Activities

A. Public Information Activities

Elevation Certificate: Maintain FEMA's Elevation Certificate and make copies available to inquirers.

Map Determinations: Respond to inquiries for Flood Insurance Rate Map zone and flood data.

Outreach Projects: Advise residents about the flood hazard, flood insurance and flood protection measures.

Hazard Disclosure: Advise potential purchasers of floodprone property about the hazard.

Flood Protection Library: Maintain and publicize a library of references on flood insurance and flood protection.

Flood Protection Assistance: Provide direct advice to property owners desiring to protect themselves from flooding.

B. Mapping and Regulatory Activities

Flood Hazard Map: Prepare a map that identifies the flood hazards and where community regulations are in effect. Open Space Preservation: Credit is provided according to the amount of vacant floodplain that is kept free from buildings or fill.

Higher Regulatory Standards: Regulations that require new development to be protected to a level greater than the NFIP rules.

Additional Floor Data: Develop new flood elevations, floodway delineations, wave heights, or other regulatory flood hazard data.

Flood Data Maintenance: Make the community's floodplain maps more current, useful, or accurate.

Stormwater Management: Regulate new developments throughout the watershed to minimize their impact on surface drainage and runoff.

C. Flood Damage Reduction Activities

Repetitive Loss Projects: Develop and implement a plan to mitigate losses in repetitive flood areas.

Acquisition and Relocation: Purchase or relocate buildings and convert floodprone properties to open space.

Retrofitting: Credit is provided according to the number of pre-FIRM buildings that have been retrofitted.

Drainage System Maintenance: Conduct periodic inspections and maintain the capacities of the channels and retention basins.

Flood Control Projects: Credit is provided based on the amount of damages reduced by structural flood control projects.

D. Flood Preparedness Activities

Flood Warning Program: Provide early flood warnings to the appropriate local agencies and floodplain occupants.

Levee Safety: Maintain levees that are not credited with providing base flood protection, and develop and implement emergency response plans for them.

Dam Safety: All communities in a State with an approved dam safety program receive credit.

Additional Information Sought

FIA recognizes that implementation of the CRS is evolutionary. It also recognizes that some activities could be subject to additional credit, while other activities presently may appear not to receive any CRS credit. As experience is gained in administering the CRS, FIA may modify activities, amend procedures, and alter operations.

FIA believes that the CRS properly recognizes the benefits on undeveloped floodplains. These activities, such as open space preservation and acquisition and relocation, receive special credit and recognition. Nevertheless, it is the opinion of others that the CRS may not be sensitive enough to ecological values of floodplains. Therefore, FIA is interested in hearing about other community activities, which protect wetlands and natural floodplain functions, that should receive special consideration under the CRS.

For exmaple, the current system does not recognize activities which take place upstream beyond the community's jurisdiction because of the difficulty of measuring their impact in downstream flooding. FIA recognizes, that while independent upstream activities which protect wetlands and other natural floodplain functions may be unmeasurable, those which are undertaken statewide could potentially reduce flood damage significantly. In proposing additional activities, it must be remembered that they must be readily identifiable, observable and measurable.

FIA has attempted to address flood loss reduction measures in seven special flood-related hazard areas: alluvial fans, closed basin lakes, ice jams, moveable stream channels, mud flows, sand dunes or open beaches, and subsidence. However, due to a lack of consensus on appropriate floodplain management standards for those special hazards, equal credit is given for any management techniques which address the special nature of the identified area. This credit could be increased in the future if FIA can develop more specific special hazard management criteria. Therefore, FIA is seeking any additional information on ways to reduce flood losses in these special hazard areas and ways to better measure their flood loss reduction impact on flood losses.

Finally, to assist FIA in making the CRS responsive to NFIP participating communities' concerns, FIA also is seeking input from interested parties in response to the following questions:

1. What other activities should be considered for credit under the CRS?

2. Do you have any recommendations to enhance the CRS?

3. If you believe additional technical assistance is needed, what CRS subjects should be emphasized? (Commentors should keep in mind that the overall rating system must be self-supporting from a revenue perspective; any additional technical assistance or other administrative costs could require additional revenues from premiums.)

4. Do you believe that the CRS, as presently formulated, will meet its established goals?

5. What impediments does your community expect to encounter in pursuing credit under the CRS?

Issued: June 29, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-15975 Filed 7-9-90; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011213-016.

Title: Spain-Italy/Puerto Rico Island, Pool Agreement.

Parties: Compania Trasatlantica Espanola, S.A., d'Amico Societa de Navigazione, S.p.A., Nordana Lien As, Sea-Land Service, Inc.

Synopsis: The proposed modification would extend the current pool period to December 31, 1990. The current pool period would have a duration of one year, rather than six months, i.e., January 1, 1990 to December 31, 1990, followed by two succeeding pool periods, each having a six month duration from January 1, 1991 to June 30, 1991 and July 1, 1991 to December 31, 1991.

Dated: July 3, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-15911 Filed 7-9-90; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572/603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement Nos.: 224-200383 and 224-200384.

Title: City of Los Angeles/Overseas Shipping Company/Associated Container Transportation (Pace Line), Marine Terminal Agreement No. 224-200383. City of Los Angeles/Overseas Shipping Company/Columbus Line Terminal, Agreement No. 224-200384.

Parties: City of Los Angeles ("City"), Overseas Shipping Company ("Overseas"), Associated Container Transportation (Pace Line) ("ACT"), Columbus Line ("Columbus").

Filing Party: Raymond P. Bender, Assistant City Attorney, City of Los Angeles, 425 S. Palos Verdes Street, San Pedro, CA 90733-0151.

Synopsis: The Agreements provide for the City and Overseas to reimburse ACT and Columbus for certain costs incurred in relocating from the premises formerly occupied by Overseas pursuant to FMC Agreement No. 224-010828 to other berths within the Port of Los Angeles. In consideration, Columbus and ACT individually agree to continue to bring all of its' Southern California

business to the Port of Los Angeles through July 1991 so long as an area within the Port is available to handle its' vessels.

Dated: July 3, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-15912 Filed 7-9-90; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.601 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200382-001

Title: The Port Authority of New York and New Jersey/Universal Maritime Services Corporation Terminal Agreement

Parties: The Port Authority of New York and New Jersey (Port) Universal Martime Service Corporation (UMSC)

Synopis: The Agreement amends the parties' basic agreement to: (1) provide for UMSC to surrender certain areas of the premises; (2) reconfigure and enlarge the premises; (3) provide for certain Port improvements to the premises; and (4) change the agreement's Right of User Clause to allow the premises to be used by UMSC as a marine container terminal.

Agreement No.: 224-200382

Title: The Port Authority of New York and New Jersey/Bulk Innovations, Inc./Universal Maritime Services Corporation Terminal Agreement

Parties: The Port Authority of New York and New Jersey (Port) Bulk Innovations, Inc. (BI). Universal Martime Service Corporation (UMSC)

Synopis: The Agreement provides for BI, a bulk cargo operator, to trasnsfer and assign to UMSC the Port of New York and New Jersey Lease No. LPN-18 covering certain premises at Port Newark. The Port consents to such assignment.

By Order of the Federal Maritime Commission.

Dated: July 3, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-15928 Filed 7-9-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0701]

Review of Restrictions on Director and Employee Interlocks, Cross-Marketing Activities and the Purchase and Sale of U.S. Government Agency Securities

The Board is providing an opportunity for public comment in connection with its review of certain of the conditions established in its decisions permitting nonbank subsidiaries of bank holding companies (so-called "section 20 subsidiaries") to underwrite and deal in securities to a limited extent. The conditions that the Board has under review are: the prohibition on director, officer and employee interlocks between a section 20 subsidiary and its affiliated banks and thrifts; the restriction on a bank or thrift acting as agent for, or engaging in marketing activities on behalf of, an affiliated section 20 subsidiary; and the prohibition on the purchase and sale of U.S. Government agency securities, which is part of the broader prohibition on the purchase and sale of financial assets, between a section 20 subsidiary and its affiliated bank or thrift.

In its section 20 Orders, the Board established a series of operating limitations in order to minimize the potential for securities underwriting and dealing risk being passed to the federally insured affiliates, and thus to the federal safety net, as well as to prevent conflicts of interest, unfair competition and other adverse effects. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473, 492 (1987); and *J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192, 202-03 (1989). In adopting these restrictions, the Board stated that it would, based on experience, review the continued appropriateness of particular limitations.

Earlier this year, in its consideration of applications by three foreign banking organizations to establish section 20 subsidiaries, the Board stated that it would consider modifying the restrictions on director, officer and employee interlocks and on cross-marketing activities, where such modifications would be consistent with the purposes of the prudential framework established for securities activities conducted by bank holding companies. *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC*, 76 Fedeal Reserve Bulletin 158, 165-66 (1990). The Board noted that various proposals considered by the Congress to amend the Glass-Steagall Act would not have required a complete prohibition on interlocks between a securities underwriting subsidiary and an insured bank, and would have authorized the Board to permit officer or director interlocks, taking into consideration the size of the organizations, safety and soundness considerations, and other appropriate factors, including unfair competition in securities activities. Also, the proposed legislation did not restrict cross-marketing activities by a bank or thrift on behalf of its affiliated section 20 subsidiary.

One of the principal purposes of the section 20 Order restrictions is to ensure that the securities activities are conducted in a corporation over which the affiliated banks have no ownership, financial or managerial control. In this regard, the Board is considering in its review of the interlock prohibitions possible alternative restrictions that would maintain the intended separation while allowing the affiliates to take advantage of existing managerial expertise and operational efficiencies. These modifications could include allowing director interlocks between the section 20 subsidiary and its bank and thrift affiliates so long as a majority of the board of directors of the securities underwriting company would not be composed of directors of the affiliated depository institutions. The current restrictions already allow interlocks between the boards of a bank holding company and its section 20 subsidiary.

With respect to officer and employee interlocks, the Board is requesting comment on whether the complete prohibition could be replaced with a

general statement requiring that the section 20 subsidiary not be managed or controlled by its affiliated banks or thrifts and that there not be a substantial identify of personnel between the entities. In this regard, the Board is also seeking comment on whether certain specific interlocks should be prohibited (*e.g.*, whether an officer or director of a bank or thrift should not be permitted to serve as chief executive officer or chief financial officer of an affiliated securities underwriting company). If these interlock provisions are modified, an officer of a bank or thrift also serving as an officer of a section 20 subsidiary would have to take care to ensure that there is no confusion regarding which entity the officer represents in a particular transaction, especially when dealing with customers of the bank or thrift.

The Board's section 20 Orders also prohibit a bank or thrift affiliate of a section 20 company from acting as agent for, or engaging in marketing activities on behalf of, the section 20 company. Like the interlock prohibitions, the principal purpose of the cross-marketing prohibitions is to ensure that the securities activities are insulated in operation from the affiliated insured depository institutions.

The Board did not intend to place a complete bar on marketing activities by an insured bank on behalf of its affiliated section 20 company. The current restriction, for instance, allows a bank to inform its customers of the available services of the underwriting subsidiary, and, at the specific request of a customer, to provide information about securities being underwritten by the section 20 affiliate. As noted, the Congressional Glass-Steagall repeal legislation passed by the Senate and by the House Banking Committee did not prohibit cross-marketing activities. That legislation would have required certain disclosures regarding the uninsured status of securities affiliates and would have prohibited banks from expressing an opinion about securities offered by affiliates without disclosing the affiliate's role and interest with respect to the securities.

The Board is requesting comment on modifying the current cross-marketing restrictions by placing substantial reliance upon the current section 20 Order disclosure requirements, coupled with the provisions in sections 16 and 21 of the Glass-Steagall Act prohibiting a bank from engaging directly in underwriting and dealing in securities. The Board is particularly interested in receiving comments on those aspects of such marketing activities that should be limited in order to avoid potential conflicts of interest.

The Board is also considering amending the restriction in the Board's section 29 Orders regarding a bank or thrift's purchase of financial assets from, or sale of such assets to, its affiliated securities underwriting company. The conditions in those Orders currently prohibit such transactions except in the case of U.S. Treasury securities, or direct obligations of the Canadian federal government, that are not subject to repurchase or reverse repurchase agreements between the underwriting subsidiary and its bank or thrift affiliates. See, *J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, and Security Pacific Corporation*, 75 Federal Reserve Bulletin 192, 216 (1989); and *Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC AND Barclays Bank PLC*, 76 Federal Reserve Bulletin 158, 172 (1990).

The Board permitted the purchase and sale of U.S. Treasury securities, as an exemption to the prohibition on the purchase and sale of financial assets between a section 20 company and its bank or thrift affiliate, because of the breadth and liquidity of the market for such instruments. The Board is seeking comment on extending this exemption to those U.S. Government agency securities, and those U.S. Government-sponsored agency securities, for which there is a market with a breadth and liquidity comparable to that for U.S. Treasuries. Accordingly, in requesting comment on whether the exemption for U.S. Treasury securities should be expanded by allowing the purchase and sale of U.S. agency securities between a bank or thrift and its affiliated securities underwriting company, the Board is seeking specific comment on the criteria that should be used in making the determination to exempt such securities from the restriction on the purchase and sale of assets. Commenters are also asked to address whether the exemption should apply to the securities of all U.S. Government and U.S. Government-sponsored agencies, and to all issues of such securities, regardless of the size of the issue.

Any comments regarding these matters should refer to Docket No. R-0701 and be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 8, 1990.

Board of Governors of the Federal Reserve System, July 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 90-15879 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

Bank Shares, Inc., Acquisition of Companies Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Bank Shares, Incorporated, Minneapolis, Minnesota; to engage directly in providing employee benefits consulting services. These activities have been approved by Board Order, Norstar Bancorp, Inc., 71 Fed. Res. Bull. 656 (1985).

Board of Governors of the Federal Reserve System, July 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15951 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

Fred C. Bramlage Trust, Change in Bank Control, Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Fred C. Bramlage Trust, Fred Bramlage, Trustee; to acquire 55.78 percent of the voting shares of Fort Riley Bancshares, Inc., Fort Riley, Kansas, thereby indirectly acquire Fort Riley National Bank, Fort Riley, Kansas.

Board of Governors of the Federal Reserve System, July 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15952 Filed 7-9-90; 8:45 am]

BILING CODE 6210-01-M

The Merchants Holding Co., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 2, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The Merchants Holding Company, Winona, Minnesota; to acquire 97 percent of the voting shares of La Crescent State Bank, La Crescent, Minnesota.

Board of Governors of the Federal Reserve System, July 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15953 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

Midland Bank, PLC, London, England; Proposal To Enage in Various Payment Instrument, Foreign Exchange, Precious Metal, Derivative Contract, Tax Refund Agent and Incidental Activities

Midland Bank, PLC, London, England ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to acquire through its wholly-owned subsidiary, Thomas Cook Inc., Princeton, New Jersey ("TCI"), all of the voting shares of Deak International Limited, New York, New York, thereby acquiring indirectly Deak International Goldline (U.S.) Ltd., New York, New York, and Deak & Co. AG, Zurich, Switzerland (collectively, the "Companies"), and thereby to engage *de novo* through the Companies in the following activities on a worldwide basis:

(1) Issuing and/or selling to customers, directly or through unaffiliated institutions, U.S. dollar and foreign currency denominated travellers checks, money orders, and similar consumer-type instruments (such as gift checks) with a face value of $1,000 or less pursuant to § 225.25(b)(12) of the Board's Regulation Y (12 CFR 225.25(b)(12); and certain incidental activities, including cashing U.S. and foreign currency denominated travellers checks; purchasing or sending for collection U.S. dollar or foreign denominated consumer-type instruments and payment instruments drawn abroad; acting as a payment agent for wire transfers and payment orders issued by affiliated and unaffiliated institutions; providing refunds for lost or stolen consumer-type instruments at the request of affiliated and unaffiliated issuers; and cashing U.S. dollar payroll checks.

(2) Issuing and/or selling U.S. dollar and foreign currency denominated drafts, wires, and payment orders (collectively, "payment instruments") with no maximum face value.

(3) Purchasing and selling, directly or through affiliated and unaffiliated institutions, foreign currency (bank notes and coin) at wholesale and retail for the account of the Companies and providing incidental activities, including providing cash advances on credit cards for foreign exchange, payment instrument, and consumer-type instrument customers.

(4) Providing general information, both historical and current, on exchange rates, currency markets, and the use of currencies to wholesale and retail customers, potential customers, and interested parties.

(5) Engaging in foreign exchange forward, options, futures, swaps, and options of futures transactions for the Companies' own account for hedging purposes.

(6) Purchasing and selling gold and silver bullion, rounds, and coins (collectively, "precious metals") for the Companies' own account and the account of customers at wholesales and retail, directly or through banks and financial planners, including FCMs, certified public accountants, SEC registered broker-dealer IRA custodians, and similar entities; repurchasing precious metals sold to such customers; providing storage facilities for customers of Companies, Companies' affiliates and those of unaffiliated financial institutions; and providing other incidental services, such as assaying precious metals, arranging for the transportation of precious metals, and providing management and administrative services with respect to precious metals.

(7) Purchasing and selling for the Companies' own account options, futures, and options on futures and engaging in forward transactions on

precious metals as a means to hedge their positions in the underlying metals.

(8) Providing general information, both historical and current, on precious metals, cost of various precious metals, and precious metals markets to customers, potential customers, and others.

(9) Arranging, at a customer's request and for the customer's account, for loans to the customer from a bank selected by the customer to enable the customer to purchase precious metals.

(10) Acting as exclusive sales tax refund agent, pursuant to contract, for the State of Louisiana in connection with its tax-free shopping program for foreign visitors.

Applicant is currently authorized, pursuant to section 4(c)(8) of the BHC Act, to issue and sell travellers checks, wire transfers, and drafts in any currency in a face amount of $1,000 or less, *Midland Bank Limited*, 67 Federal Reserve Bulletin 729 (1981), and to issue and sell travellers checks, drafts, and wire transfers denominated in foreign currency with no maximum face amount, *Midland Bank, PLC*, 74 Federal Reserve Bulletin 252 (1988). Applicant is also authorized to engage in wholesale foreign banknote operations and related advisory services. *Midland Bank, PLC*, 74 Federal Reserve Bulletin 577 (1988).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with the Board's approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Association* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board has previously determined that the following proposed activities are closely related and proper incidents to banking: (1) Purchase and sale of foreign currency at wholesale and retail, both for a company's own account and the account of customers. *Midland Bank, PLC*, 74 Federal Reserve Bulletin 577 (1988) (purchase and sale of foreign exchange at wholesale and retail and related advisory services); *Long Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988) (trading foreign exchange for a company's own account); *Southern Bancorporation, Inc.*, 69 Federal Reserve Bulletin 224 (1983) (purchase and sale of foreign currency for the account of customers); (2) providing general information on exchange rates, currency markets, and the use of currencies in various countries. *Midland Bank, PLC*, 74 Federal Reserve Bulletin 577 (1988); (3) engaging in foreign exchange, forward, options, futures, and options on futures transactions in foreign currencies for a company's own account. *The Hong Hong and Shanghai Banking Corporation*, 75 Federal Reserve Bulletin 217 (1989) (authorized under limited circumstances); and (4) purchase and sale of gold and silver bullion, rounds, and coin for a company's own account and the account of customers at wholesale and retail. *Standard and Chartered Banking Group Limited*, 38 FR 27,552 (1973) (purchase and sale of precious metals); *Westpac Banking Corporation*, 73 Federal Reserve Bulletin 61 (1987) (purchase and sale of precious metals and various incidental activities, including arranging for the sale, custody, assaying, and shipment of such precious metals).

Applicant proposes to engage in the following activities that the Board has not previously determined to be permissible under section 4(c)(8) of the BHC Act: (1) Issuance and sale of payment instruments with no maximum face value in the manner and subject to the restrictions approved by the Board in *Wells Fargo & Company*, 72 Federal Reserve Bulletin 148 (1986) and *Midland Bank, PLC*, 74 Federal Reserve Bulletin 252 (1988), with the exception of certain proposed modifications regarding the treatment of payment instrument proceeds; (2) engaging in foreign exchange swaps transactions for a company's own account for hedging purposes; (3) cashing U.S. and foreign currency denominated travellers checks; purchasing or sending for collection U.S. dollar or foreign currency denominated consumer-type instruments and payment instruments drawn abroad; acting as payment agent for wire transfers and payment instruments issued by affiliated and unaffiliated institutions; providing refunds for lost or stolen consumer-type instruments at the request of affiliated and unaffiliated institutions; and cashing U.S. dollar payroll checks (collectively, "payment instrument services"); (4) provision of precious metal storage facilities for a company's precious metal customers and customers of unaffiliated financial institutions; (5) providing general information on precious metals, cost of precious metals, and precious metals markets to customers, potential customers, and other interested parties; and (6) acting as exclusive sales tax refund agent for the State of Louisiana in connection with the State's tax-free shopping program for foreign visitors.

Applicant states that all of the proposed activities that the Board has not determined to be permissible for bank holding companies are closely related and proper incidents to banking. Applicant asserts that the provision of payment instrument services is integral and a necessary adjunct to the issuance or sale of such instruments. Applicant argues additionally that the provision of precious metal storage service is incidental to the purchase and sale of precious metals and is also the functional equivalent of the provision of safe deposit services, an activity permissible for bank holding companies pursuant to § 225.22(b) of the Board's Regulation Y (12 CFR 225.22(b)). With respect to the provision of general information on precious metals, Applicant states that the activity is incidental to the purchase and sale of precious metals and in that respect is analogous to the permissible incidental activity of providing general information regarding the purchase and sale of foreign currency. *See, e.g., Midland Bank, PLC*, 74 Federal Reserve Bulletin 577 (1988). Finally, Applicant asserts that acting as sales tax refund agent for the State of Louisiana is similar to acting as fiscal agent for a state, an activity generally permitted to banks and trust companies under state law.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant contends that permitting Applicant to engage in the proposed activities would result in increased competition, greater convenience to customers, and increased efficiency in the provision of financial services. With respect to the

issuance and sale of payment instruments, Applicant states that the proposed modifications would not result in adverse effects and are consistent with the current requirements of the payment instruments market. Applicant emphasizes that the proposed provision of general information regarding precious metals would not create any conflicts with Applicant's positions in precious metals because Applicant would not advise customers regarding precious metals exposures or investment in precious metals and the information would consist primarily of easily verifiable public information.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 24, 1990. Any request for a hearing on this application must be accompanied, as required by § 262.3(e)) of the Board's Rules of Procedure (12 CFR 262.3(e)), by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15954 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

Newberry Bancorp., Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Newberry Bancorp., Inc., Sault Ste. Marie, Michigan; to acquire Equitec Savings Bank, Oakland, California, and thereby engage in owning, controlling, or operating a savings association pursuant to § 225.25(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15955 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

Gombert Family Trust, et al., Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 20, 1990.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gombert Family Trust, Aileen Gombert, Trustee, Fairbury, Nebraska; to acquire an additional 6.97 percent for a total of 30.12 percent of the voting shares of Washington 1st Banco, Inc., Washington, Kansas and thereby indirectly acquire First National Bank, Washington, Kansas.

2. Margaret Moffet, Learned, Kansas; to acquire an additional 14.5 percent for a total of 38.3 percent of the voting shares of Pawnee Bancshares, Inc., Learned, Kansas and thereby indirectly acquire First National Bank & Trust Company, Learned, Kansas.

Board of Governors of the Federal Reserve System, July 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15882 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

United Bank Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for

immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. United Bank Corporation, Barnesville, Georgia; to acquire First Federal Savings and Loan Association of Griffin, Griffin, Georgia, a federal stock savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15883 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

First State Bancorp, Inc., Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 30, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First State Bancorp, Inc., La Crosse, Wisconsin; to become a bank holding company by acquiring 90 percent of the voting shares of State Bank of La Crosse, La Crosse, Wisconsin.

Board of Governors of the Federal Reserve System, July 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15880 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

Garwin Bancorporation; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90-14694) published at page 26014 of the issue for Tuesday, June 26, 1990.

Under the Federal Reserve Bank of Chicago, the entry incorrectly listed as Carwin Bancorporation is revised to read as follows:

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

* * * * *

2. Garwin Bancorporation, Garwin, Iowa; to become a bank holding company by acquiring 96.50 percent of the voting shares of Farmers Savings Bank, Garwin, Iowa.

Comments on this application must be received by July 16, 1990.

Board of Governors of the Federal Reserve System, July 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-15881 Filed 7-9-90; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 174; 7-D-MO-0607-C]

Portion Harry S. Truman Dam and Reservoir, Missouri; Transfer of Property

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated February 28, 1990, the property, consisting of 360.6 acres of unimproved land, known as a portion Harry S. Truman and Reservoir, Missouri has been transferred to the State of Missouri.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Public Law 80-537 (16 U.S.C. 667b), as amended by Public Law 92-432.

Dated: June 26, 1990.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 90-15887 Filed 7-9-90; 8:45 am]

BILLING CODE 6820-96-M

Used Automatic Data Processing Equipment; Public Forum

AGENCY: Information Resources Management Service, GSA.

ACTION: Public forum on used automatic data processing equipment.

SUMMARY: The General Services Administration (GSA) is considering new guidelines for the acquisition and use of used ADP equipment and would like to receive comments from industry and agency managers on this subject. To allow views about what the guidelines should contain to be thoroughly aired, the Information Resources Management Service of GSA is holding a public forum on this issue. This GSA Forum for Industry and Agency Managers is entitled "Let's discuss the role of used computers in satisfying Government requirements."

DATES: The GSA Forum will be held on July 24, 1990.

ADDRESSES: The discussion will be held in the GSA Auditorium at 18th and F Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Renee Hughes, Office of Innovative Office Systems, (KO), Office of Federal Information Resources Management,

telephone (202) 501–1333 or FTS, 241–1333.

SUPPLEMENTARY INFORMATION: The GSA Forum will be held from 9:30 a.m. to 11:30 a.m. on Tuesday, July 24, 1990. Anyone interested in commenting on this issue is invited to attend. Comments are being solicited from industry, Federal agencies and other interested parties.

Prospective attendees are encouraged to pre-register for the Forum. Registration information (name, affiliation, phone number) should be mailed to Forum Director (KO), room B–212A, GSA, 18th & F Streets NW., Washington, DC 20405.

Dated: June 28, 1990.

Fred L. Sims,

Deputy Assistant Commissioner for Information Resources, Management Policy.

[FR Doc. 90–15886 Filed 7–9–90; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of the Language Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Language Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on July 19, 1990. The meeting will take place from 10 a.m. to 5 p.m. in room 8A28, Building 31A, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 10 a.m. to 2 p.m. to compare the language research portfolio of the NIDCD to the National Strategic Research Plan to (1) identify changes in the field since the Plan was developed; (2) recommend levels and areas of research activity; and (3) recommend potential initiatives. Attendance by the public will be limited to space available.

The meeting will be closed to the public from 2 p.m. to adjournment in accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, to discuss and recommend individuals to serve on a scientific panel to update the National Strategic Research Plan in the language area. These discussions could reveal personal information concerning these individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the subcommittee's meeting and a roster of participants may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 310–402–1129, upon request.

Dated: June 27, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–15850 Filed 7–9–90; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of [Alpha-Methylbenzyl Alcohol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of [alpha-methylbenzyl alcohol, a cosmetic ingredient and food flavoring agent.

Toxicology and carcinogenesis studies were conducted by administering [alpha-methylbenzyl alcohol in corn oil] by gavage at doses of 0, 375, or 750 mg/kg to groups of 50 rats and 50 mice of each sex 5 days per week for 103 weeks.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity * of [alpha-methylbenzyl alcohol for male F344/N rats, as shown by increased incidences of renal tubular cell adenomas and adenomas or adenocarcinomas (combined). There was no evidence of carcinogenic activity for female F344/N rats administered 375 or 750 mg/kg. Renal toxicity characterized by severe nephropathy and related secondary lesions was observed in the dosed rats, and excessive mortality occurred during the last quarter of these studies. Poor survival reduced the sensitivity of the studies for detecting the presence of a carcinogenic response both in chemically exposed groups of male rats and in the high dose group of female rats. There was no evidence of carcinogenic activity of [alpha-methylbenzyl alcohol for male or female B6C3F1 mice administered 375 or 750 mg/kg for 2 years.

The study scientist for these studies is Dr. Michael P. Dieter. Questions or comments about this Technical Report should be directed to Dr. Dieter at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3368.

Copies of Toxicology and Carcinogenesis Studies of [Alpha-Methylbenzyl Alcohol in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 369) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: July 3, 1990.

David P. Rall,

Director.

[FR Doc. 90–15851 Filed 7–9–90; 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

Public Health Service National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Mirex

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of mirex, formerly used as a systemic insecticide and as a fire retardant.

Toxicology and carcinogenesis studies of mirex were conducted by administering diets containing 0, 0.1, 1.0, 10, 25 or 50 ppm mirex to groups of 52 F344/N rats of each sex for 104 weeks.

Under the conditions of these 2-year feed studies, there is clear evidence of carcinogenic activity * for male and female F344/N rats, as primarily indicated by marked increased incidences of benign neoplastic nodules of the liver, as well as by increased incidences of pheochromocytomas of the adrenal gland and transitional cell papillomas of the kidney in males and by increased incidences of mononuclear cell leukemia in females.

The study scientist for these studies is Dr. James Huff. Questions or comments about the conduct of this Technical Report should be directed to Dr. Huff at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3780.

Copies of Toxicology and Carcinogenesis Studies of Mirex

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

(1,1a,2,2,3,3a,4,5,5,5a,5b,6-Dodecachlorooctahydro-1,3,4-metheno-1H-cyclo-buta(cd)pentalene) in F344/N Rats (Feed Studies) (TR 313) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: July 3, 1990.

David P. Rall,

Director.

[FR Doc. 90-15852 Filed 7-9-90; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of 4-Vinyl-1-cyclohexene Diepoxide

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on toxicology and carcinogenesis studies of 4-vinyl-1-cyclohexene diepoxide, used as a chemical intermediate and as a reactive diluent for diepoxides and epoxy resins.

Toxicology and carcinogenesis studies were conducted by administering 4-vinyl-1-cyclohexene diepoxide in acetone to groups of 60 rats of each sex at doses of 0, 15, or 30 mg/animal by dermal application to the clipped dorsal interscapular region, 5 days per week for 15 months or 105 weeks. 4-Vinyl-1-cyclohexene diepoxide in acetone was administered to groups of 60 mice of each sex at doses of 0, 2.5, 5, or 10 mg/animal in the same manner.

Under the conditions of these 2-year dermal studies, there was clear evidence of carcinogenic activity * of 4-vinyl-1-cyclohexene diepoxide for male and female F344/N rats, as shown by squamous cell and basal cell neoplasms of the skin. There was clear evidence of carcinogenic activity of 4-vinyl-1-cyclohexene diepoxide for male and female B6C3F1 mice, as shown by squamous cell carcinomas of the skin and ovarian neoplasms in females; increased incidences of lung neoplasms in females may also have been related to chemical application.

The study scientist for these studies is Dr. Rajendra Chhabra. Questions or comments about this Technical Report should be directed to Dr. Chhabra at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3386.

Copies of Toxicology and Carcinogenesis Studies of 4-Vinyl-1-cyclohexene Diepoxide in F344/N Rats and B6C3F1 Mice (Dermal Studies) (TR 362) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: July 3, 1990.

David P. Rall,

Director.

[FR Doc. 90-15853 Filed 7-9-90; 8:45 am]

BILLING CODE 4140-01-M

* The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

Social Security Administration

Issuance of Social Security Acquiescence Rulings

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: Social Security Acquiescence Rulings are published under the authority of the Commission of Social Security. These rulings explain the manner in which the Social Security Administration (SSA) applies decisions of the United States Courts of Appeals, which conflict with SSA policy, when adjudicating claims under title II and title XVI of the Social Security Act and Part B of the Black Lung Benefits Act. The rulings were effective upon the date of publication and are available to the public.

FOR FURTHER INFORMATION CONTACT: Lita Drapkin, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-6011.

SUPPLEMENTARY INFORMATION: On June 4, 1986, the issuance and availability of the first 14 rulings was announced by notice in the **Federal Register** (51 FR 20354). A second notice announcing the issuance and availability of 12 additional rulings, covering the period from May 20, 1986 throguh March 31, 1987, was published in the **Federal Register** on August 7, 1987 (52 FR 29441). This notice announces the issuance and availability of 11 more rulings which have been issued during the period from May 1, 1987, through November 14, 1988; the withdrawal of one ruling which was issued earlier; and the withdrawal of one of the rulings issued during this period. Brief descriptions of these rulings follow. The parenthetical number which follows each ruling number refers to the Circuit involved. These are summaries of Acquiescence Rulings that were issued by SSA prior to the January 11, 1990, publication of the final rule on "Application of Circuit Court Law" (55 FR 1012). As that rule explains, any Acquiescence Rulings issued on or after January 11, 1990, will be published in full text in the **Federal Register.**

AR 87-2(11)

Effective Date: 5/1/87.

Butterworth v. *Bowen,* 796 F.2d 1379 (11th Cir. 1986)—The Conditions under whch the Appeals Council has the Right to Reopen and Revise Prior Decisions—Titles II and XVI of the Social Security Act.[1]

Issue: Under what conditions does the Appeals Council have the right to reopen and revise prior final determinations or decisions?

Explanation of How the Social Security Administration Will Apply the Decision Within the Circuit: This ruling applies only to cases in which the claimant resides in Alabama, Florida, or Georgia at the time of the Appeals Council's review.

Where an administrative Law Judge's (ALJ) decision has become final (i.e., the 60-day time limit for appealing to the Appeals Council has expired, and the the claimant has not appealed and the Appeals Council has not initiated own motion review within the 60-day time limit), the Appeals Council may not reopen and revise the ALJ's decision since the ALJ's decision is not considered to be properly before the Appeals Council.

AR 87-3(9)

Effective Date: 5/6/87.

Hart v. *Bowen,* 799 F.2d 567 (9th Cir. 1986)—Current Market Value of an Installment Sales Contract as an Excess Resource.

Issue: Whether the current market value of an installment sales contract is considered an excess resource for supplemental security income (SSI) purposes when the installment sales contract results from the sale of an excluded home and its current market value is not reinvested in a new home within 3 months of receipt but the periodic installments received under the contract are reinvested in another excluded home within 3 months of receipt.

Explanation of How the Social Security Administration Will Apply the Decision Within the Circuit: This ruling applies only to cases in which the SSI claimant resides in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands,

[1] Although *Butterworth* was a title II case, the Appeals Council's reopening and revising procedures involved in *Butterworth* are identical in title XVI claims. Therefore, this Ruling extends to both title II and title XVI claims.

Oregon, or Washington at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In cases where an SSI claimant or recipient sells one excluded home and purchases another within 3 months of receipt of the proceeds, accepts an installment sales contract as part of the sale, and reinvests all monies from the sales contract into the purchase of the replacement home within 3 months of receipt of the payments, the value of that contract will be considered part of the value of the replacement home and therefore fully excludable under 20 CFR 416.1212 (b) and (d).

AR 86-24(10)

Effective Date: 9/26/86.

Hansen v. *Heckler,* 783 F.2d 170 (10th Cir. 1986); *Elliott* v. *Heckler,* No. 84-2055 (10th Cir. 1986)—Invalidation of the Not Severe Regulations—Titles II and XVI of the Social Security Act.

Issue: Whether an individual's impairment(s), alone or in combination, may be found not severe, hence not disabling under the sequential evaluation process based only on medical evidence which establishes that the impairment(s) would have no more than a minimal effect on the individual's ability to work even if the individual's age, education, or work experience were specifically considered.

Notice of Withdrawal of Acquiescence Ruling

Effective Date: 8/18/87.

The United States Supreme Court decision in *Bowen* v. *Yuckert,* 482 U.S. 137, 107 S. Ct. 2287 (1987), held that the Social Security Administration's severity regulation, 20 CFR §§ 404.1520(c) and 416.920(c)(1986); is valid on its face under the language of the Social Security Act and the legislative history. Accordingly, Acquiescence Ruling No. AR 86-24(10) is hereby withdrawn and obsoleted. Adjudicators in the Tenth Circuit will no longer follow the *Hansen* v. *Elliott* decisions, but will decide the cases based on the approved regulation, as clarified by Social Security Ruling No. SSR 85-28.

AR 87-4(8)

Effective Date: 8/31/87.

Iamarino v. *Heckler,* 795 F.2d 59 (8th Cir. 1986)—Positive Presumption of Substantial Gainful Activity (SGA) for Sheltered Work.

Issue: Whether there is a positive presumption of SGA for average monthly earnings from sheltered work of more than $300 which is different from the positive presumption of SGA for similar earnings from competitive work.

Explanation of How the Social Security Administration Will Apply the Decision Within the Circuit: This ruling applies only to cases in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, or South Dakota at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing and Appeals Council review where a person is working in sheltered employment and earning on the average more than $300 monthly.

There is a middle ground between the $300 average monthly amount from sheltered work which is ordinarily presumed to be not SGA, and an unspecified upper limit [2]. If average monthly earnings from sheltered work fall in this middle ground, SSA must generally compare the time, energy, skill, responsibility, and pay of the sheltered work and work in the community to determine whether earnings show that a person has engaged in substantial gainful activity. Earnings in this middle ground may not be presumed to be SGA.

Effective Date: 11/9/87.

Velazquez v. *Heckler,* 802 F.2d 680 (3d Cir. 1986)—Consideration of Vocational Factors in Past Work Determinations.

Issue: Whether in making a determination as to whether a person can do past work, the Social Security Administration (SSA) must consider age, education, and work experience as well as residual functional capacity.

Explanation of How the SSA Will Apply the Decision Within the Circuit: This ruling applies only to cases where the individual resides in Delaware, New Jersey, Pennsylvania, or the Virgin Islands [3] at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing, or Appeals Council review.

Before a claim can be denied at step four (step seven in Continuing Disability Review Cases) of the sequential evaluation process (ability to do past relevant work), the adjudicator must consider (and discuss in the decision) age, education, and work experience.

SSA intends to clarify the regulation at issue in this case through the rulemaking process. SSA will continue to apply this ruling until such clarification is made.

AR 88-1(11)

Effective Date: 1/29/88.

Patterson v. *Bowen,* 799 F.2d 1455 (11th Cir. 1986), *reh'g denied,* (February 12, 1987)—Use of the Age Factor in the Medical-Vocational Guidelines in Making Disability Determinations.

Issue: Whether the Secretary is required to reevaluate evidence of a physical or mental impairment which has been already considered in assessing a claimant's residual functional capacity in determining if a claimant's age adversely affects his or her ability to adapt to a new work environment.

Explanation of How the Social Security Administration Will Apply the Decision Within The Circuit: This ruling applies only to cases in which the claimant resides in Florida, Georgia, or Alabama at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

In cases where the issue of disability is resolved at the last step of the sequential evaluation process, the medical-vocational guidelines would otherwise direct a decision of "not disabled," and the claimant offers substantial credible evidence of his or her physical or mental impairments as proof that the ability to adapt to other work is less than the level established under the medical-vocational guidelines for individuals of the particular age, a specific finding must be made as to the claimant's ability to adapt to a new work environment.

Because the medical-vocational guidelines would not direct a decision in such a case, the adjudicator must use the guidelines as a framework to establish the existence of jobs within the national economy which the claimant is capable of performing.

The Social Security Administration (SSA) intends to clarify the regulation at issue in this case through the rulemaking process. SSA will continue to apply this ruling until such clarification is made.

AR 88-2(8)

Effective Date: 2/24/88.

Groseclose v. *Bowen,* 809 F.2d 502 (8th Cir. 1987)—Meaning of the Term "Against Equity and Good Conscience"

[2] Since the court did not specify an upper limit, all cases involving earnings from sheltered work averaging in excess of $300 a month after all appropriate deductions will require individualized adjudication. No presumption of SGA may be applied.

[3] Because there is no supplemental security income program in the Virgin Islands, this ruling will apply only to Social Security disability claims in the Virgin Islands.

in the Rules for Waiver of Overpayment Recovery.

Issue: What is the meaning of the term "against equity and good conscience" as it appears in the Social Security rules on waiver of recovery of an overpayment when the individual requesting the waiver did not receive the overpayment, was without fault in causing the overpayment, lived in a separate household from the overpaid person and did not know of the overpayment.

Notice of Withdrawal of Acquiescence Ruling

Effective Date: 3/28/89.

On July 7, 1988, the Social Security Administration (SSA) published final regulations (53 FR 25481) which adopted the decision of the United States Court of Appeals for the Eighth Circuit in *Groseclose* v. *Bowen*, 809 F.2d 502 (8th Cir. 1987). Regulations 20 CFR 404.509 and 20 CFR 416.554, which define what SSA considers to be "against equity and good conscience" in deciding whether or not to recover an overpayment of Social Security and/or supplemental security income benefits, were expanded to cover the situation in *Groseclose*. Accordingly, Acquiescence Ruling No. AR 88-2(8) is hereby withdrawn and obsoleted. Adjudicators in the Eighth Circuit will no longer follow the *Groseclose* decision, but will decide cases based on the amended regulations.

AR 88-3(7)

Effective Date: 3/1/88.

McDonald v. *Bowen*, 800 F.2d 153 (7th Cir. 1986), *amended on reh'g*, 818 F.2d 559 (7th Cir. 1987)—Entitlement to Benefits Where a Person Returns to Work Less Than 12 Months After Onset of Disability.

Issue: Does a person's return to substantial gainful activity (SGA) within 12 months of the onset date of his or her disability, and prior to an award of benefits, preclude an award of benefits and entitlement to a trial work period?

Explanation of How the Social Security Administration Will Apply the Decision Within the Circuit: This ruling applies only to cases in which the claimant resides in Illinois, Indiana, or Wisconsin at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing, or Appeals Council review.

A claimant for title II disability insurance benefits or child's insurance benefits based on disability should be allowed and granted a trial work period if the following conditions are met:

- The claimant establishes that, at the time he/she returned to work and thereafter, the disability was still expected to last for at least 12 consecutive months from the date of onset;
- The person returns to work more than 5 months after the onset date (but within the 12-month period following the onset date); and
- The return to work demonstrating ability to engage in substantial gainful activity occurs before approval of the award.

A claimant for title XVI benefits based on disability should be allowed and granted a trial work period if the following conditions are met: [4]

- The claimant establishes that, at the time he/she returned to work and thereafter, the disability was still expected to last at least 12 consecutive months from the date of onset;
- The person returns to work after the onset date (but within the 12-month period following the onset date); and
- The return to work demonstrating ability to engage in substantial gainful activity occurs before approval of the award.

AR 88-4(1)

Effective Date: 07/18/88.

Dion v. *Secretary of Health and Human Services*, 823 F.2d 669 (1st Cir. 1987)—Applicability of the Windfall Offset Provision, Section 1127 of the Social Security Act.

Issue: Whether section 1127 of the Social Security Act (the Act) applies to initial claims filed under both titles II and XVI of the Act, in which claimants are found entitled to title II benefits for months prior to July 1, 1981 (the effective date of the statute), even if the claims are not finally adjudicated until after that date.[5]

Explanation of How the Social Security Administration Will Apply the Decision Within the Circuit: This ruling applies to concurrent initial claims for benefits under both titles II and XVI of the Act, involving both an award of benefits under title II for months prior to July 1981, and a resulting payment prior to February 1985 of retroactive title II benefits, to a beneficiary who resides in Maine, New Hampshire, Massachusetts, Rhode Island, or Puerto Rico at the time of the determination or decision at any administrative level, i.e., initial, reconsideration, administrative law judge hearing, or Appeals Council review.

If such a claimant is found to be entitled to retroactive title II benefits for 1 or more months prior to July 1981, section 1127 of the Act will not apply to any months covered by the determination of entitlement and no reduction of retroactive title II benefits for months in which SSI payments were received will be required.

AR 88-5(1)

Effective Date: 10/27/88.

McCuin v. *Secretary of Health and Human Services*, 817 F.2d 161 (1st Cir. 1987)—Reopening by the Appeals Council of Decisions of Administrative Law Judges under Titles II and XVI of the Social Security Act.

Issue: Whether the Appeals Council of the Social Security Administration (SSA) may reopen an administrative law judge's decision on its own initiative more than 60 days after the date of the administrative law judge's decision (i.e., after the own-motion review period has expired).

Expalantion of How SSA Will Apply the Decision Within the Circuit: This ruling applies only to cases in which the claimant resides in Maine, Massachusetts, New Hampshire, Rhode Island or, for title II only, in Puerto Rico at the time of the ALJ's decision.

Where an ALJ's decision has become final (i.e., the time for requesting Appeals Council review of the decision has expired and no request for such review has been filed by the claimant and the Appeals Council has not taken own-motion review within the 60-day time limit), the Appeals council may not reopen and revise the decision on its own initiative under 20 CFR sections 404.987, 404.988, 416.1487, and 416.1488.

SSA intends to clarify the reopening regulations at issue in this case through the rulemaking process. SSA will continue to apply this ruling until such clarification is made.

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[4] Pursuant to statutory amendments made by Pub. L. 99-643, effective July 1, 1987, the trial work period provisions are no longer applicable to title XVI disability claims. Beginning July 1, 1987, a disabled individual, who was eligible to receive "regular" SSI benefits (section 1611) for a month and subsequently has earnings ordinarily considered to represent substantial gainful activity, will move directly to section 1619 status rather than be accorded a trial work period. This ruling extends to such individuals, i.e., claimants for title XVI benefits based on disability should be allowed and granted section 1619 status if the return to work is on or after July 1, 1987, and the same conditions are met.

[5] Section 1127 of the Act was amended in its entirety by section 2615 of Public Law 98-369 effective with respect to retroactive benefits payable after January 1985. For claims in which retroactive benefits are actually paid after January 1985, the application of the section 1127, rather than on the prior statutory provision construed by the court in *Dion*.

AR 88-6(8)

Effective Date: 10/27/88.

Levings v. *Califano*, 604 F.2d 591 (8th Cir. 1979)—Definition of an Inmate of a Public Institution—Title XVI of the Social Security Act.

Issue: Whether, for purposes of determining eligibility for supplemental security income (SSI), an individual is considered an inmate of a public institution when he or she resides voluntarily in such an institution and pays for all services provided.

Explanation of How the Social Security Administration Will Apply the Decision Within the Circuit: This ruling applies only to cases in which the individual resides in a public institution in North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri,[6] or Arkansas at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, administrative law judge hearing or Appeals Council review.

An individual who is a "resident of a public institution," as defined in 20 CFR 416.201, does not meet the definition of an "inmate" of a public institution as used in section 1611(e)(1)(A) of the Act if he or she:

1. Is confined in such an institution voluntarily *and*;

2. Pays for all services provided. For purposes of applying this ruling, "pays for all services" will be interpreted to mean that the individual (or the individual's agent) pays, or is responsible for paying, the institution's charges for his or her care. Furthermore, for applicants, the intent to pay charges from subsequent SSI benefits will meet this requirement.

AR 88-7 (5)

Effective Date: 11/14/88.

Hickman v. *Bowen*, 803 F.2d 1377 (5th Cir. 1986)—Evaluation of Loans of In-kind Support and Maintenance for Supplemental Security Income (SSI) Benefit Calculation Purposes.

Issue: Whether in-kind support and maintenance, the value of which is to be repaid, may be considered a loan and therefore not income for the purpose of calculating SSI benefits.

Explanation of How the Social Security Administration Will Apply the Decision Within the Circuit. This ruling applies to cases in which the individual resides in Louisiana, Mississippi or Texas at the time of the decision or determination at any administrative level, i.e., initial, reconsideration, administrative law judge hearing, or Appeals Council review.

When an SSI applicant or recipient alleges receiving in-kind support and maintenance, that in-kind support and maintenance will be considered a loan and its value will not be considered for the purpose of calculating SSI benefits only if the applicant or recipient can demonstrate that the in-kind support and maintenance received was, in fact, loaned to him or her in realistic anticipation of repayment, that he or she intends to repay the debt, and that under the terms of SSR 78-26 a bona fide loan agreement has been made.

[6] It should be noted that the Eighth Circuit's holding in *Levings* has been applied to all SSI applicants and recipients voluntarily residing in "Missouri nursing home district nursing homes" and paying for any services or treatment under the district court's order in *Hollingsworth* v. *Schweiker*, Civil Action No. N81-0035C (E.D. Mo. March 3, 983).

Paperwork Reduction Act

This notice does not impose recordkeeping or reporting requirements on the public.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance; 13.806—Special Benefits for Disabled Coal Miners; 13.807—Supplemental Security Income.)

Dated: June 15, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 90-15857 Filed 7-9-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3117]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451-7th Street, SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 2, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for Moderate Rehabilitation, Section 8 Housing Assistance Payments Program.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Housing and Community Development Act requires Public Housing Agencies (PHAs) to submit Form HUD-52515A when applying for an allocation of Section 8 Moderate Rehabilitation units. The Department will make funding decisions based on a determination of consistency with the housing needs and evidence of PHAs capabilities.

Form Number: HUD-52515A.

Respondents: States or local governments.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52515A	200		1		5		1,000

Total Estimated Burden Hours: 1,000.
Status: Extension.
Contact: Michelle McLaurin, HUD, (202) 708-3944, Scott Jacobs, OMB, (202) 395-6880.
Dated: July 2, 1990.

Proposal: Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures (Basic Forms and Worksheets).
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The information is needed to determine tenant eligibility, to compute tenant annual rents for those tenants occupying HUD subsidized housing units, and to collect information on citizenship/alien status to effect program utilization and need.
Form Number: HUD-50059, a/b/c/d/e/f/g/h/k.
Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Report	2,171,256		1		Varies		2,171,256

Total Estimated Burden Hours: 10,000.
Status: Extension.
Contact: James J. Tahash, HUD (202) 426-3944 John Allison, OMB, (202) 395-6880.
Dated: July 2, 1990.

[FR Doc. 90-15947 Filed 7-9-90; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 010-4130-09-GPO-0114]

Intent to Prepare a Supplemental Environmental Impact Statement; Molycorp Guadalupe Mountain Tailing's Disposal Facility

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), Albuquerque District, is preparing a supplement to the Molycorp Guadalupe Mountain Tailings Disposal Facility EIS. This Supplemental Environmental Impact Statement (SEIS) will analyze alternatives to Molycorp Inc.'s proposed Guadalupe Mountain Tailings Disposal Facility. Written comments will be received for 30 days from the date of the **Federal Register** publication of this notice.

Preliminary consideration of the alternative issue indicates the need to analyze a "No Action" alternative and at least one alternative site or alternative method of handling tailings. The following criteria will be used to identify alternatives that will be considered in the SEIS.

Criteria for Alternative Sites

1. The alternative must have a capacity for at least 150 million tons of tailings.
2. The alternative must meet Federal Law and regulations.
3. The alternative must be technologically feasible by accepted engineering methods.
4. The alternative must be economically feasible.

After recommendations for alternative sites have been collected, they will be analyzed and a public notice will be distributed. This notice will state the alternatives nominated; those which will be considered in the SEIS; and those not considered feasible and the reasons. We are considering two approaches for the preparation of the SEIS. We would either set up a team of BLM employees or use a contracted consultant team. This decision will be based on our workload and budget contraints. In either case, the work will involve an interdisciplinary team with specialists representing all major issues and concerns.

Once alternatives are chosen for study, the BLM will analyze the alternatives and a draft SEIS will be published and distributed for public review and comment. The SEIS comment period will be for 60 days. Comments will be considered and addressed before a final SEIS is published. We will issue a Record of Decision after 30 days from issuance of the final SEIS. This will allow time for public review but is not intended to solicit additional comments.

SUPPLEMENTARY INFORMATION: In 1982 Molycorp requested approval of a plan of operations to construct and operate a 568-acre molybdenum tailings pond and supporting facilities on 1,230 acres of public land near Questa in Taos County, New Mexico. Molycorp has located millsite claims on the land for this purpose in accordance with 30 U.S.C. Section 42.

The project was designed to provide storage for approximately 200 million tons of tailings from Molycorp's mine located about 12 miles east of the proposed tailings storage site. BLM completed an environmental assessment in 1985 which led to the preparation of an Environmental Impact State (EIS). The EIS considered many issues including water quality, air quality, cultural resources, and wildlife.

The Final EIS, filed with EPA November 9, 1989, found that the proposed action, mitigated as required, would result in no unnecessary and undue degradation of the public lands. Based on this finding the decision was made to approve Molycorp's Plan of Operations. The approval decision was appealed by four individuals or groups to the Interior Board of Land Appeals (IBLA). The basis of these appeals was that the EIS did not meet NEPA requirements because alternatives were not adequately analyzed.

The BLM Director, in a Memorandum dated May 7, 1990, directed that a supplemental EIS (SEIS) be prepared to address alternatives.

On May 24, 1990, in a letter to Molycorp, BLM suspended approval of the plan of operations for the Guadalupe Mountain Tailings Disposal Facility pending completion of the SEIS.

DATES: Recommendations on alternative sites will be accepted for 30 days following the publication of this notice.

Additional public participation opportunities will be provided on the draft SEIS. Notice of the draft SEIS availability will be announced in the **Federal Register** and there will be a 60-day period for public review and comment.

ADDRESSES: Comments on alternatives should be addressed to Robert T. Dale, Bureau of Land Management, 435 Montano NE, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Kent Hamilton, Bureau of Land Management, Albuquerque District Office, 435 Montano NE, Albuquerque, New Mexico 87107, telephone commercial (505) 761-4546, FTS 474-4546.

Dated: July 2, 1990

Larry L. Woodard,

State Director.

[FR Doc. 90-15949 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-FB-M

[NV 030-90-4212-24]

Temporary Closure of Public Lands; Washoe County, NV

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1990 Reno National Championship Air Races.

EFFECTIVE DATES: September 17 through September 23, 1990.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. Telephone (702) 885-6000.

SUPPLEMENTARY INFORMATION: This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

Mt. Diablo Meridian

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼;
Sec. 16, N½ and SW¼.

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated this 28th day of June, 1990.

James W. Elliott,

District Manager.

[FR Doc. 90-15888 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV020-4331-10]

Meeting of the Winnemucca District Advisory Council; Nevada

AGENCY: Bureau of the Land Management, Interior.

ACTION: Winnemucca District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Winnemucca District Advisory Council will be held on Thursday and Friday, August 2 and 3, 1990. The meeting will begin at 8:00 a.m. August 2 in the conference room of the Bureau of Land Management Office at 705 East 4th Street, Winnemucca, Nevada 89445 and will include a tour of the Black Rock Desert/High Rock area on that day.

The agenda for the meeting will include:

1. National Conservation Area Proposal for the Black Rock Desert/High Rock Area.

The meeting is open to the public. Interested persons may make oral statements to the Council at 10:00 a.m. on August 3 or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager by July 31, 1990. Depending on the number of persons wishing to make oral statement, a per person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: June 28, 1990.

Robert J. Neary,

Acting District Manager.

[FR Doc. 90-15931 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-00-4212-11; AZA-24405 and AZA-24406]

Recreation and Public Purpose Lease With Option To Purchase Lands; Mohave County, AZ

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of realty action—lease of public land, Mohave County, Arizona.

SUMMARY: The following two parcels of public lands and interests therein have been determined to be suitable for classification and lease with the option of purchase after substantial development under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*) and the regulations established by 43 CFR 2740 and 2910. These lands will not be offered for lease until at least sixty (60) days after the date of publication of this notice in the **Federal Register:**

Gila and Salt River Meridian

AZA-24405 (Edgemont Road & Pierce Ferry Road)

T. 21 N., R. 18 W.,
Sec. 10, W½SW¼NW¼SW¼.

Containing 5 acres, more or less.

AZA-24406 (19th Street & Pierce Ferry Road)

T. 26 N., R. 18 W.,
Sec. 8, E½SW¼SE¼SW¼.

Containing 5 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

These lands are hereby classified for public purpose use as fire station sites. The Lake Mohave Ranchos Fire District has made application for, and intends to use these public lands to construct two fire stations and related facilities. The stations will serve the needs of the community of Dolan Springs.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes act and to all applicable regulations of the Secretary of the Interior. Initially the lands will be leased and after substantial development of the parcel, the land may be purchased under the special pricing guidelines for $2.50 per acre or $50.00 minimum.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All Minerals shall be reserved to the United States, together with right to prospect for, mine and remove the minerals.

4. The following rights on AZA-24405;

a. Right-of-way AZA-11587 issued to Citizens Utilities Rural Co., Inc. for telephone purposes.

b. Right-of-way AZA-18556 issued to Citizens Utilities Company for powerline purposes.

c. Right-of-way AZA-20863 issued to Mohave County for Pierce Ferry Road.

d. Rights Mohave County may have for Edgemont Road.

5. The following rights on AZA-24406:

a. Right-of-way AZA-20863 issued to Mohave County for Pierce Ferry Road.

b. Rights Mohave County may have for 19th Street.

Subject to all valid existing rights, the lands are hereby segregated from appropriations under any other public land law, including locations under the mining laws. This segregation will terminate upon issuance of a lease, publication of a Notice of Termination, or 18 months from the date of this publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Elaine F. Marquis, Area Manager, Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401 (602) 757-3161.

Dated: July 2, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90-15932 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-00-4212-13; IDI-22680]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Ralph Hillman and Sons, of Idaho Falls, Idaho 83401, for the following described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 14, NW¼NW¼.
T. 8 N., R. 38 E.,
Sec. 31, S½SE¼.
T. 13 N., R. 38 E.,
Sec. 22, NE¼NE¼.

Comprising 160.00 acres of public land.

In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 7 N., R. 37 E.,
Sec. 23, NW¼NW¼.
T. 8 N., R. 38 E.,
Sec. 27, E½NW¼.
T. 8 N., R. 39 E.,
Sec. 18, lots 1 and 2.

Comprising 186.43 acres of private land.

The purpose of the exchange was to acquire non-federal land which has high public value for wildlife resources and management efficiency. The public interest was well served through completion of this exchange.

The values of the federal land and the non-federal land in the exchange were appraised at $16,000 and $18,600, respectively.

Dated: June 29, 1990.

Jimmie A. Buxton,

Acting Deputy State Director for Operations.

[FR Doc. 90-15933 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-00-4212-11; N-31668; 0-00154]

Realty Action; Lease/Purchase for Recreation and Public Purposes in White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land has been identified and examined and will be classified under section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), as suitable for lease/purchase under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 16 N., R. 63 E.,
Sec. 22, SW¼SE¼NW¼, W½SE¼SE¼NW¼.

Aggregating 15 acres (gross) more or less.

The lands are hereby classified for public purpose use as school sites and/or school facilities, 43 CFR parts 2410, 2430.4 (a) and (c). The White Pine County School District intends to use the land for educational facilities in conjunction with adjoining leased public land. The subject land would tie together two separated larger parcels of public land now under lease to the school district. Together, the lands would provide a contiguous block of land for development. The present lease would be amended to include the subject 15 acres. The lease would terminate on November 3, 1991, the expiration date of the present lease, unless by then there is physical development of planned facilities on the lands. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

And any lease and/or patent issued will also be subject to:

A 85 foot wide easement for streets, roads and public utilities reserved for public use along the inside of the west boundary of the land.

The land is not required for any federal purpose. The classification for lease/purchase is consistent with the Bureau's planning for this area. The United States owns only the surface estate; the mneral estate is in nonfederal ownership. Detailed information, concerning this action is available for review at the Bureau of Land Management, Ely District Office, Ely, Nevada 89301.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, except for recreation and public purposes.

DATES: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective September 10, 1990. This classification, when effective, supersedes the prior classification of the subject land on November 14, 1967 for recreational use.

FOR FURTHER INFORMATION CONTACT: Ronald Sjogren, (702) 289-4865.

Dated: June 25, 1990.

Kenneth G. Walker,

District Manager.

[FR Doc. 90-15889 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-HC-M

[UT-060-00-4211-15; UTU-62064; 2200; 0-00152]

Realty Action; Proposed Land Exchange With Private Parts in Grand County, UT

AGENCY: Notice of realty action, UTU-62064; proposed land exchange with private party in Grand County, Utah.

ACTION: Notice is given that the following described parcel of public land has been examined, and through the development of land-use planning decisions (based upon public input, resource considerations, regulations, and Bureau policies) the parcel has been found suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2756; 43 U.S.C. 1716). The parcel contains 60.0 acres of public land in Grand County, Utah described as follows:

Salt Lake Meridian, Utah

T. 24 S., R. 22 E., Section 35, N1/2S1/2NE¼, N1/2S1/2S1/2NE¼.

In exchange for these lands, the United States will acquire the following described 162.46 acres of land in Grand County from Colin Fryer:

Salt Lake Meridian, Utah

T. 24 S., R. 23 E., Section 2, Lots 2,3,4,5,8 and 9.

The purpose of this exchange is to acquire approximately one mile of river frontage property on the Colorado River with high recreational value for which use the property would be managed.

This exchange will also serve to resolve trespass occurring on the public lands.

The public interest will be well served by making the exchange. The acreage of the lands to be exchanged has been adjusted based on a preliminary value estimate. Money will be used to equalize values upon completion of the final appraisal of the lands. The exchange involves both surface and mineral estates.

The public lands will be conveyed subject to the following terms and conditions:

1. A Right-of-Way Reservation UTU-66143 for administrative access to public lands south of the parcel.

2. A reservation to accomodate section 24 of the Federal Power Act of June 10, 1920, as amended (41 Stat. 1063; 16 USC 818).

3. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

4. The conveyance of the lands will be subject to all valid existing rights and reservations of record, which include, but are not to be limited to the following:

a. Power Site Classification No. 377.

b. Road Right-of-Way UTUO-16462 to the Federal Highway Administration for State Route No. 128.

c. Federal Oil and Gas Lease UTU-53053.

The private lands will be acquired subject to all valid existing rights.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws, and the mining laws, excepting the mineral leasing laws. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

Comments: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, District Manager, Moab District Office, P.O. Box 970, Moab, UT 84532. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning this action may be obtained from Mary von Koch, Realty Specialist, Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, Utah 84532, (801) 259-8193, or Brad Groesbeck, District Realty Specialist, Moab District Office, 82 E. Dogwood, P.O. Box 970 Moab, Utah 84532, (801) 259-6111.

Dated: June 29, 1990.

Gene Nodine,

District Manager.

[FR Doc. 90-15890 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-5101-08]

Amendments to Pony Express Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of intent to amend the Pony Express Resource Management Plan (RMP) for construction of Interstate natural gas transmission pipelines.

SUMMARY: The Salt Lake District proposes to amend the Pony Express Resource Management Plan to allow for construction of interstate natural gas transmission pipelines. The pipelines would be built across public land in the Kimball Creek Drainage in southern Utah County, Townships 11 and 12 South, Range 3 West, Salt Lake Meridian.

The Pony Express Resource Management Plan lists several decisions pertaining to the location and construction of transportation and utility systems. Issuance of rights-of-way for the natural gas transmission lines may be in conflict withs several decisions. These include (1) construction of a major right-of-way within 1,200 feet of riparian/aquatic habitats; (2) construction on lands where an above-ground right-of-way would be an obvious visual or physical intrusion through a narrow drainage; (3) construction on land with slopes greater than 30 percent; and (4) construction of a major right-of-way outside of an identified utility corridor.

This proposed plan amendment would only apply to these decisions for public lands in the Kimball Creek drainage.

National Environmental Policy Act (NEPA) documentation for this action is the Final Environmental Impact Statements (FEISs) for the Mojave-Kern River-El Dorado Natural Gas Pipeline Projects, and the Mojave-Kern River-El Dorado Natural Gas Pipeline Projects Supplement to the Final FEIS Report/Statement Volume 6 WyCal Supplement. These FEISs determined the environmental consequences of the proposed action, plus all reasonable alternatives.

For 30 days from the date of publication of this notice, the BLM will accept comments on this proposal to do a plan amendment.

Existing planning documents and information are available at the Pony Express Resource Area Office, 2370 South, 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Howard Hedrick, Pony Express Resource Area Manager, 2370 South, 2300 West, Salt Lake City, Utah 84119, phone (801) 977-4300.

Dated: June 21, 1990.

James M. Parker,

State Director.

[FR Doc. 90-15950 Filed 7-9-90; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Forms MMS-4050, Mine Information Form; MMS-4059, Solid Minerals Operations Report; and MS-4060, Solid Minerals Facility Report

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for Comments on Format and Use of Forms MMS–4050, Mine Information Form; MMS–4059, Solid Minerals Operations Report; and MMS–4060, Solid Minerals Facility Report (OMB Clearance Number 1010–0063).

SUMMARY: The Minerals Management Service, (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and other Federal agencies an opportunity to comment on proposed and/or currently in use reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting form car clearly understood, and the impact of collection requirements on respondents can be properly addresssed. Currently MMS is soliciting comments concerning the format and use of Forms MMS–4050, Mine Information Form; MMS–4059, Solid Minerals Operations Report; and MMS–4060, Solid Minerals Facility Report.

DATES: Written comments must be received on or before August 9, 1990. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible of your intention to submit comments.

ADDRESSES: Comments on the use of Forms MMS–4050, MMS–4059, and MMS–4060 should be submitted to Mr. Dennis C. Whitcomb, Chief, Rules and Procedures Branch, MMS Royalty Management Program, MS 3910, P.O. Box 25165, Denver, CO, 80225, telephone (303) 231–3432.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE FORMS: Copies of the forms with explanatory information may be obtained by contacting Ms. Jeane Kalas, Rules and Procedures Branch, (303) 321–3046.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior is required to gather information on sales of solid minerals taken from leased Federal and Indian lands and to ensure the proper royalty amount of those sales is paid to the Indians, the States, and the Federal Government in a timely manner. Forms MMS–4050, MMS–4059, and MMS–4060 are used to provide production information required by the Secretary to fulfill his responsibility. Form MMS–4050 is used to establish a data base and to make changes to the data base. Form MMS–4059 is submitted by the lease operator to report production and disposition of minerals. Form MMS–4060 is submitted by operators of processing or storage facilities that handle solid minerals production before royalty is determined.

II. Current Actions

The format and content of Forms MMS–4050, MMS–4059, and MS–4060 are unchanged.

III. Request for Comments

Comments from users of the forms and other interested parties should include the following general areas:

A. Are the instructions and definitions provided by MMS clear and sufficient? If not, what clarification is required.

B. Are the data requested on the forms available from respondents' records in the same format as requested on the forms, or do the forms required that data must be extracted from company records and reformatted especially for use on the forms?

C. Reporting burden for completing From MMS–4059 is estimated to range from one-half hour to 1.25 hour depending on the complexity of the report. Burden for completing Form MMS–4060 is estimated to range from 1 to 2 hours. Form MMS–4050 is completed by Bureau of Land Management or the Minerals Management Service and imposes no burden on mine operators. How much time, including time for gathering data, completing calculations, typing, and mailing do you estimate is required to prepare and submit these forms?

D. What is your estimate of the costs, direct and indirect, specifically related to gathering and maintaining data required on the forms, and typing and mailing the forms? Provide details of your estimates.

E. Considering that the Secretary is required to collect this information, do you have specific suggestions to make this information collection more efficient?

F. Do you know specifically of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.; 30 CFR 201 et seq.

Dated: June 8, 1990.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 90–15935 Filed 7–9–90; 8:45 am]

BILLING CODE 4310–MR–M

Forms MMS–4014, Report of Sales and Royalty Remittance, Solid Minerals, and MMS–4030, Payor Information Form, Solid Minerals

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for comments on format and use of forms MMS–4014, — report of sales and royalty remittance, solid minerals, and MMS–4030, payor information form, solid minerals (OMC Clearance Number 1010–0064).

SUMMARY: The Minerals Management Service, (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.), provides the general public, industry, and other Federal agencies an opportunity to comment on proposed and/or currently in use reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the imapct of collection requirements on respondents can be properly addressed. Currently MMS is soliciting comments concerning the format and use of Forms MMS–4014, Report of Sales and Royalty Remittance, Solid Minerals, and MMS–4030, Payor Information Form, Solid Minerals.

DATES: Written comments must be received on or before August 9, 1990. If you anticipate that you will be submitting coments, but find it difficult to do so within the period of time allowed by this notice you should advise the contact listed below as soon as possilbe of your intention to submit comments.

ADDRESSES: Comments on the use of Forms MMS–4014 and MMS–4030 should be submitted to Mr. Dennis C. Whitcomb, Chief, Rules and Procedures Branch, MMS Royalty Management Program, MS 3910, P.O. Box 25165, Denver, CO, 80225, telephone (303) 231–3432.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE FORMS: Copies of the forms with explanatory information may be obtained by contacting Ms. Jeane Kalas, Rules and Procedures Branch, (303) 231–3046.

SUPPLEMENTARY INFORMATION:

III. Request for Comments

I. Background

The Secretary of the Interior is required to gather information on sales of solid minerals taken from leased Federal and Indian lands and to ensure the proper royalty amount of those sales is paid to the Indians, the States, and the Federal Government in a timely manner. Forms MMS–4014 and MMS–4030, are used to provide the information required by the Secretary to fulfill his responsibility. Form MMS–4030 establishes a data base. Form MMS–4014 must accompany monthly royalty payments from Federal and Indian solid mineral leases.

II. Current Actions

The format and content of Forms MMS–4014 and MMS–4030 are unchanged.

III. Request for comments

Comments from users of the forms and other interested parties should include the following general areas:

A. Are the instructions and definitions provided by MMS clear and sufficient? If not, what clarification is required.

B. Are the data requested on the forms available from respondents' records in the same format as requested on the forms, or do the forms require that data must be extracted from company records and reformatted especially for use on the forms?

C. Reporting burden for completing Form MMS–4030 is estimated to average one-half hour to establish a data base or to change the data base. The time required to complete each line on Form MMS–4014 is estimated to be 2 minutes. How much time, including time for gathering data, making calculations, typing, and mailing do you estimate is required to complete Form MMS–4030, and Form MMS–4014?

D. What is your estimate of the costs, direct and indirect, specifically related to gathering and maintaining data required on the forms, and typing and mailing the forms? Provide details of your estimates.

E. Considering that the Secretary is required to collect this information, do you have specific suggestions to make this information collection more efficient?

F. Do you know specifically of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.; 30 CFR 201 et seq.

Dated: June 8, 1990.

Jerry D. Hill,

Associate Director of Royalty Management.

[FR Doc. 15934 Filed 7–9–90; 8:45 am]

BILLING CODE 4310–MR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 30, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 25, 1990.

Carol D. Shull,

Chief of Registration, National Register.

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Cloverdale, 2600 and 2608 Tilden St. NW., Washington, 90001115

Springland, 3550 Tilden St. NW., Washington, 90001114

FLORIDA

Indian River County

Lawson, Bamma Vickers, House, 1133 US 1, Sebastian, 90001116

Orange County

Waite—Davis House, 5 S. Central Ave., Apopka, 90001127

Pinellas County

Tarpon Springs City Hall, Old, 101 S. Pinellas Ave., Tarpon Springs, 90001117

GEORGIA

Hart County

Patterson—Turner Homeplace, Smith—McGee Bridge Rd., Hartwell vicinity, 90001126

LOUISIANA

Orleans Parish

Lower Garden District (Boundary Increase), Roughly, S side of St. Charles Ave. between US 90 and Josephine St. and two parcels on S side of Annunciation St., New Orleans, 90001128

MARYLAND

Cecil County

West Nottingham Academy Historic District, Jct. of Harrisville and Firetower Rds., Colora vicinity, 90001125

MICHIGAN

Branch County

Coldwater Downtown Historic District, W. Chicago St. from Division to Clay Sts., Coldwater, 90001124

East Chicago Street Historic District (Boundary Increase I), Roughly, Pearl St. between Hudson and Lincoln Sts., Coldwater, 90001129

East Chicago Street Historic District (Boundary Increase II), Roughly, Church St. from Jefferson to Daugherty Sts., Hull St. from Morse St. to Park Pl., and Park from Church to Hull, Coldwater, 90001130

Marshall Street Historic District, Roughly bounded by Taylor, Hull, N. Hudson, Montgomery and Clay Sts., Coldwater, 90001123

South Monroe Street Historic District, 89–175 and 90–146 S. Monroe St. and 17 Park Ave., Coldwater, 90001121

West Pearl Street Historic District, 155–225 and 160–208 W. Pearl St., Coldwater, 90001122

OHIO

Fairfield County

Pickerington Depot, 50 N. Center St., Fairfield, 90001119

Fayette County

Mark Road Bridge, Mark Rd. over Sugar Cr., Staunton vicinity, 90001118

TEXAS

Lubbock County

Fort Worth and Denver South Plains Railway Depot, 1801 Ave. G, Lubbock, 90001120

[FR Doc. 90–15859 Filed 7–9–90; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31689]

Exemption; Golden Gate Bridge, Highway and Transportation District—Acquisition Exemption, Northwestern Pacific Railroad Co. et. al.

Golden Gate Bridge, Highway and Transportation District (GG), a non-carrier, has filed a notice of exemption to acquire the San Rafael Branch line owned by Northwestern Pacific Railroad Company (NWP) and Southern Pacific Transportation Company (SP) located between milepost 26.96, at the centerline of Novato Creek, in the vicinity of Rowland Boulevard, in Novato, and milepost 15.71, at Bellam Boulevard, in San Rafael, Marin County, CA, a

distance of 11.25 miles. As part of the transaction, GG will grant an easement to NW to operate over 1.3 miles of the line.[1] Service over the remaining portion of the line has been discontinued pursuant to authority in Docket No. AB-14 (Sub-No. 6X).

Any comments must be filed with the Commission and served on David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, San Francisco, CA 94105.

Applicant shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 3, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-15983 Filed 7-9-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Gillette Company, et al., Civil No. 90-0053-TFH (D.D.C.)

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(a) and (b), the United States publishes below the comments it received on the Competitive Impact Statement and proposed Final Judgment in the captioned case, filed in the United States District Court for the District of Columbia, together with the response of the United States to these comments.

Copies of the public comments and response are available on request for inspection and copying in Room 3229, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the District of Columbia.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the United States District Court for the District of the District of Columbia

United States of America, Plaintiff, v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Defendants. Civil Action No. 90-0053 TFH.

Comments to the United States by Warner-Lambert Company regarding the proposed final judgment

To: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S Department of Justice, Room 10-437, Judiciary Center Building, 555 4th Street NW., Washington, DC 20001.

Warner-Lambert Company, pursuant to the Tunney Act (15 U.S.C. § 16 (b-h)), respectfully submits as its comments on the Proposed Final Judgment the attached Memorandum which has been filed in the District Court in the present action.

The Proposed Final Judgment is deficient in the following respects:

(1) The decree does not provide for full divesture by Gillette of the equity and debt securities and other assets of Eemland held by Gillette.

(2) The decree, by implication, sanctions communications between Gillette and Eemland on competitively sensitive matters such as Eemland's future prices, marketing plans, future production schedules and technological developments.

(3) The decree does not adequately address the use in the United States of the Wilkinson technology and know-how that Gillette is acquiring.

The grounds for the foregoing objections are set out in the attached memorandum.

Respectfully submitted.

Abe Krash,

Bar No. 022871

Arnold & Porter,

1200 New Hampshire Avenue NW., Washington, DC 20036, (202) 872-6752.

Attorney for Warner-Lambert Company.

Dated: May 11, 1990.

In the United States District Court for the District of the District of Columbia

United States of America, Plaintiff, v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Defendants. Civil Action No. 90-0053 TFH.

Memorandum by Warner-Lambert Company in opposition to proposed final judgment

Abe Krash,

Bar No. 022871

Arnold & Porter,

1200 New Hampshire Avenue NW., Washington, DC 20036, (202) 872-6752.

Attorney for Warner-Lambert Company.

Dated: May 11, 1990.

Table of Contents

Table of Authorities

[1] The transaction does not relieve NWP from its common carrier obligation to provide service over this portion of the line.

In the United States District Court for the District of the District of Columbia

United States of America, Plaintiff, v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Defendants. Civil Action No. 90–0053–TFH

Memorandum by Warner-Lambert Company in Opposition to Proposed Final Judgment

I. Introductory

Warner-Lambert Company, as *amicus curiae*, urges the Court to reject the Proposed Final Judgment because the relief accepted by the Government is contrary to the public interest standard of the Tunney Act.[1] In view of The Gillette Company's overwhelmingly dominant position in the wet razor blade market, it is clear that the acquisition of Wilkinson Sword's U.S. business by Gillette would violate the antitrust laws. Similarly, Gillette may not indirectly acquire Wilkinson, in whole or in part, by acquiring substantial shares in and by becoming a major creditor of Eemland Management Services, the corporate parent of Wilkinson. In essence, through the Proposed Final Judgment, the Department of Justice is permitting the dominant firm in a highly concentrated industry to acquire substantial equity and debt interests in one of its few remaining competitors. Gillette's complete divestiture of its holdings of Eemland stock and debentures is required by the antitrust laws to protect competiton in the U.S. razor blade market.

[1] 15 U.S.C. § 16 (1988).

The government surely cannot argue that it had to settle for limited relief in the present case because of difficulties it might encounter in prevailing on the merits. In view of its enormous share of the market, Gillette's acquisition of the debt and equity securities of the parent company of a competitor would patently violate Section 7 of the Clayton Act.

We are unaware of any precedent for allowing the acquisition of a competitor by a dominant firm to stand subject only to injuctive relief. To the contrary, the Supreme Court ruled squarely, in a landmark antitrust case, that injunctive relief is totally unacceptable as a substitute for complete divestiture in a merger case. *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316 (1961). Indeed, as the Court stated, "[c]omplete divestiture is peculiarly appropriate in cases of stock acquisitions which violate § 7." *Id.* at 328. Within recent days, the Supreme Court has reaffirmed the principle that "in Government actions divestiture is the preferred remedy for an illegal merger or acquisition." [2] This Court should not sanction any departure from this firmly established rule.

Gillette may seek to justify this transaction on the theory that it is merely making an investment. That theory is not persuasive. Gillette is not in the banking business; it is a razor blade company, and it has acquired a substantial stock interest in and become a major creditor of a rival company. The public interest in preserving the integrity of the competitive process clearly outweights Gillette's investment objectives.

II. The Facts

A. The Transaction

Gillette is the market leader in the wet shaving industry both in the United States and internationally.[3] In its complaint in the present case (¶ 8), the government alleges that in 1988 Gillette accounted for about 50% of all razor blade unit sales in the United States.[4] Gillette's overwhelming dominance in wet blades is reinforced by its enormous share of the razor blade handle business.[5]

Wilkinson is a competitor of Gillette in the United States and in other

[2] *California* v. *American Stores Co.*, 58 U.S.L.W. 4528, 4531 (April 30, 1990).

[3] The Gillette Company, 1989 Annual Report 4 (1989) (cited hereinafter as "Gillette 1989 Annual Report").

[4] *See* United States' Complaint ¶ 8, *United States* v. *Gillette*, Civ. Action No. 90–0053 (D.D.C. filed Jan. 10, 1990) (cited hereinafter as "U.S. Complaint").

[5] Gillette accounts for over 58% of unit sales and over 67% of dollar sales in the U.S. razor market.

countries. The owner of Wilkinson, a Swedish firm, Stora Kopparbergs Bergslags AB ("Stora"), conveyed to Eemland, a Netherlands company, all the Wilkinson wet shaving businesses in the United States and the rest of the world.[6] Gillette has acquired a 22.9% nonvoting equity interest in Eemland and $69 million in Eemland debentures [7] which represent 50% of Eemland's subordinated debt financing.[8] Apart from the United States and the EEC, Gillette has acquired all of the worldwide assets and business of Wilkinson from Eemland.[9]

B. The Relief in the Proposed Final Judgment

The Department of Justice filed an action against Gillette, Eemland, Wilkinson, and Stora alleging that the transaction violates Section 7 of the Clayton Act because it may substantially lessen competition in the wet shaving razor blade market in the United States. The Complaint (¶ 17) alleges a gross violation of the Department of Justice Merger Guidelines. Nevertheless, the Department of Justice has agreed that the acquisition may proceed, subject to certain limitations. A Proposed Final Judgment and Competitive Impact Statement have been filed with this Court and published in the Federal Register [10] pursuant to the Tunney Act.[11]

The Proposed Final Judgment does not require Gillette to divest either its stockholdings in Eemland or its Eemland debentures. In short, the proposed decree permits Gillette to be a major shareholder and creditor of a competitor.

The Proposed Final Judgment also provides (§ VI.1) that "Gillette and Eemland shall not agree or *communicate in an effort to persuade the other to agree,* directly or indirectly, regarding present or future prices or other terms or conditions of sale, volume of shipments, future production schedules, marketing plans, sales forecasts, or sales or proposed sales to specific customers . . ." (emphasis added). The proposed decree thus leaves Gillette free to communicate with Eemland with respect to all of these competitively sensitive subjects so long as the communication is not part of an "effort to persuade the other to agree."

In lieu of the standard provision requiring complete divestiture of acquired shares of a competitor in a merger that violates the antitrust laws, the Proposed Final Judgment provides (§ VI.2) that Gillette shall not use its shareholder position to influence Eemland's business. Gillette is prohibited only from acquiring any additional securities of Eemland or its assets (except interest that accrues as debt) (§ IV.1) and from acting as Eemland's agent in the United States. Gillette is required (§ VI.3) to grant Eemland a proxy to vote Gillette's shares in the same proportion as other shareholders, and Gillette may not nominate any person for Eemland's Board of Directors. Moreover, instead of compelling Gillette to divest the Eemland debentures it holds, Gillette is allowed to retain the debentures and is restrained (§ VI.4) from using its creditor position to restrict Eemland's ability to refinance or obtain additional capital, from voting against any Eemland reorganization plan or from initiating any action that might cause the insolvency of Eemland.

III. Role of the Court in Tunney Act Proceedings

Under the Tunney Act, the Court must determine that the Proposed Final Judgment is in the public interest.[12] In enacting the Tunney Act, Congress intended that the courts act as an "independent check upon the terms of decrees negotiated by the Department of Justice. . . ."[13] Congress did not intend the court's determination with respect to the public interest to be merely pro forma.[14] The court has authority to modify or to refuse to approve a proposed consent decree.[15] Indeed, this court has refused to sanction provisions in proposed decrees that did not meet the public interest standard.[16]

In *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316 (1961), the Supreme Court prescribed the relief required by the public interest in merger cases. The Court had held that du Pont's acquisition of a 23% stock interest in General Motors was unlawful, and it ruled that a decree subsequently entered by the District Court that only prevented du Pont from voting its GM shares or seeking to influence GM was not an acceptable substitute for complete divestiture. The Supreme Court stated:

> Of the very few litigated § 7 cases which have been reported, most decreed divestiture as a matter of course. Divestiture has been called the most important of antitrust remedies. It is simple, relatively easy to administer, and sure. It should always be in the forefront of a court's mind when a violation of § 7 has been found.

366 U.S. at 329–31 (footnotes omitted).

The Court further stated:

> *It cannot be gainsaid that the complete divestiture is peculiarly appropriate in cases of stock acquisitions which violate § 7.* That statute is specific and "narrowly directed" . . . and it outlaws a particular form of economic control—stock acquisitions which tend to create a monopoly of any line of commerce. *The very words of § 7 suggest that an undoing of the acquisition is a natural remedy.*

Id. at 328–29 (emphasis added) (citations omitted).

IV. Gillette's Acquisition of Eemland Stock and Debentures Violates Section 7 of the Clayton Act

A. The Combination of Gillette and Wilkinson, Whether Direct or Indirect, Yields Market Shares and Levels of Concentration that Are Impermissible Under Section 7

Gillette's acquisition of Wilkinson, whether directly or indirectly through its acquisition of shares and debentures of Eemland, the parent company of Wilkinson, clearly violates Section 7. Whether one judges the legality of the acquisition by traditional standards or by the newer tools of "Herfindahl" analysis utilized by the Government in the Merger Guidelines, this acquisition is off the charts.[17]

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[6] *See* Competitive Impact Statement § II.1, *United States* v. *Gillette*, Civ. Action No. 90–0053 (D.D.C. filed March 26, 1990), *reprinted in* 55 Fed. Reg. 12,567, 12,569 (April 4, 1990) (cited hereinafter as "Competitive Impact Statement").

[7] Competitive Impact Statement § II.1.

[8] *See* The Reuter Business Report, "Gillette to Buy Major Interest in Wilkinson Blades," Dec. 20, 1989 (LEXIS, Nexis library, Wires file).

[9] *See* Competitive Impact Statement §§ II.1, III.

[10] *See generally* Proposed Final Judgment, *United States* v. *Gillette*, Civ. Action No. 90–0053 (D.D.C. filed March 26, 1990), *reprinted in* 55 Fed. Reg. 12,567, 12,571 (April 4, 1990) (cited hereinafter as "Proposed Final Judgment").

[11] 15 U.S.C. § 16 (1988).

[12] 15 U.S.C. § 16(e).

[13] *United States* v. *AT & T*, 552 F. Supp. 131, 149 (D.D.C. 1982) (footnote omitted), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (without opinion).

[14] *United States* v. *GTE Corp.*, 603 F. Supp. 730, 740 n.42 (D.D.C. 1984); *United States* v. *Gillette*, 406 F. Supp. 713, 715–17 (D. Mass. 1975).

[15] *GTE Corp.*, 603 F. Supp. at 740 n. 42.

[16] *See id.* at 740–41 (requiring that a provision be added to the proposed consent decree that would enable the government to order divestiture under relaxed legal standards if the decree was violated); *see also AT & T*, 552 F. Supp. at 147–53.

[17] Section 7 prohibits the acquisition of the "whole or any part" of stock or assets of a company where such acquisition may substantially lessen competition. 15 U.S.C. § 18 (1982). There is no numerical threshold, in terms of the percentage of stock acquired, that triggers the application of Section 7. *See Gulf & Western Indus.*, v. *Great A. & P. Tea Co.*, 476 F.2d 687, 694 (2d Cir. 1973). Nor is there any requirement that the buyer acquire a controlling interest in its competitor. *Denver & Rio Grande Western R.R. Co.* v. *United States*, 387 U.S. 485, 501 (1967). Accordingly, acquisitions of less than a 25% share in a company by a competitor

Continued

Given its tremendous market share and power in the razor blade business, Gillette cannot acquire any of its U.S. competitors. Gillette cannot acquire Wilkinson directly or indirectly by acquiring shares and debentures of Eemland, Wilkinson's parent. Under the antitrust laws, a firm cannot be a substantial stockholder or creditor of a competitor. We ask: Would the Department of Justice or the courts sanction a decree that permitted the ownership by Coca-Cola of a 23% stock interest in PepsiCo., or allow General Motors to become a major creditor of Ford or Toyota? The potential for an adverse impact on competition is simply too great to permit such investments.

Gillette is the self-proclaimed market leader of blades and razors in North America and most other areas of the world, and it has stated that its blades and razors outsell all competitive brands combined.[18] In a suit it filed against Wilkinson in 1989, Gillette characterized itself as "the leader in wet shaving technology, innovation, and sales." [19] In the United States, Gillette accounts for 50% of all razor blade unit sales and nearly 64% of dollar sales.The next closest competitor is BIC with 20%, followed by Warner-Lambert with 14%, Wilkinson with 3%, and American Safety Razor with less than 1% of unit sales.[20] In short, Gillette is larger than all of its competitors combined.

We are not aware of any case that has sanctioned the acquisition of a competitor by a firm that accounts for more than 50% of the market. The concentration levels in the wet razor blade industry are extremely high. In the instant case, the market share data show that, based on unit sales, two firms will account for 73% of the market after the acquisition, and four firms will control 87%. The concentration ratios are even higher when dollar sales are the index (82% and 94%).[21] Courts have condemned many mergers with far smaller concentration ratios than those presented here.[22]

The fact that Wilkinson's pre-acquisition share is relatively small is not a mitigating factor. The acquisition of a firm possessing only a small market share can constitute a violation of Section 7 when, as in the present case, the acquiring firm is dominant. The Supreme Court has noted that "if concentration is already great, the importance of preventing even slight increases in concentration . . . is correspondingly great." [23] In *Continental Can*, the Supreme Court condemned an acquisition of a firm with only 3.1% of a market by a firm with 21.9% of a market.[24] The acquisition of a smaller firm may be especially objectionable when, as in the instant case, the acquired firm is a particularly significant competitor in terms of its technological innovation and aggressiveness.[25] Indeed, two of the most important technological breakthroughs in razors and blades in the post-World War II era, the stainless steel blade and the bonded cartridge, were made by Wilkinson.[26] The Supreme Court has noted the increased likelihood that an acquisition will violate Section 7 when the acquired firm is particularly aggressive and innovative.[27]

The Gillette acquisition of Wilkinson is not only contrary to numerous decided cases, but it also plainly violates the Department of Justice Merger Guidelines. Section 3.12 of the Guidelines provides that:

> the Department is likely to challenge the merger of any firm with a market share of at least one percent with the leading firm in the market, provided that the leading firm has a market share that is at least 35%.[28]

Gillete's 50 percent market share substantially exceeds the Government's 35 percent standard. The acquisition of Wilkinson by Gillette also contravenes other provisions of the Guidelines with respect to market concentration. Under the Guidelines, the Department has announced that it is likely to challenge a merger where the Herfindahl Hirshcman Index ("HHI") for the industry exceeds 1800 and when the increase in the HHI following the acquisition is more than 50 points.[29] The HHI in the wet shaving razor blade market prior to the acquisition was 3105. Gillette's acquisition of Wilkinson would increase this HHI by 300, to 3405.[30] This HHI is almost double the 1800 enforcement signal, and the increase of 300 is three times what the Department of Justice categorizes as likely substantially to lessen competition except in "extraordinary cases" [31] Courts have repeatedly held that lower-post acquisition HHIs will likely substantially lessen competition in contravention of section 7.[32] Thus, the present transaction presents a textbook case for condemnation under section 7 according to the applicable authorities and the Department of Justice's merger guidelines.

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have been condemned frequently under Section 7. *See, e.g., du Pont*, 366 U.S. at 316 (23% stock acquisition violates Section 7); *Denver & Rio Grande Western*, 387 U.S. at 485 (20% interest in competitor warrants ICC assessment of anticompetitive effects under Section 7); *Crane Co. v. Harsco Corp.*, 509 F. Supp. 115, 123–25 (D. Del. 1981) (looked at the horizontal effects of a 20% acquisition in terms of combined market shares); *United Nuclear Corp. v. Combustion Eng'g, Inc.*, 302 F. Supp. 539, 552–55 (E.D. Pa. 1969) (found Section 7 violation based on market share data where defendant was acquiring 21% of the stock of a competitor and supplier).

Acquisition of debt in a competitor also falls within the purview of Section 7. *See Metro-Goldwyn-Mayer, Inc. v. Transamerica Corp.*, 303 F. Supp. 1344, 1350–51 (S.D.N.Y. 1969). In addition, Gillette is acquiring significant Wilkinson patents, *see* pp. 17–21 *infra;* and patent acquistions are subject to Section 7. *SCM Corp. v. Xerox Corp.*, 645 F.2d 1195, 1205 (2d Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982).

[18] Gillette 1989 Annual Report at 4–5.

[19] Gillette Complaint ¶ 5, *Gillette v. Wilkinson Sword, Inc.*, 89 Civ. 3586 (S.D.N.Y. filed May 22, 1989) (cited hereinafter as "Gillette Complaint").

[20] Memorandum in Support of United States' Motions for Temporary Restraining Order and Preliminary Relief at 27, *United States v. Gillette*, Civ. Action No. 90–0053 (D.D.C. filed Jan. 10, 1990) (cited hereinafter as "Mem. in Support of T.R.O.").

[21] *Id.* at 27.

[22] *See, e.g., United States v. Continental Can Co.*, 378 U.S. 441, 461 (1964) (four-firm concentration ratio of 63.7%); *United States v. Alcoa*, 377 U.S. 271, 278–80 (1964) (four-firm concentration ratio of 76%); *United States v. Philadelphia Nat'l Bank*, 374 U.S. 321, 365 (1963) (two-firm ratio of 59%); *Stanley Works v. FTC*, 469 F.2d 498, 500–01 (2d Cir. 1971) (two-firm ratio of 23–25%, four-firm ratio of 49–51%), *cert. denied*, 412 U.S. 928 (1973).

[23] *Philadelphia Nat'l Bank*, 374 U.S. at 365 n.42.

[24] *Continental Can*, 378 U.S. at 461; *see also Alcoa*, 377 U.S. at 274 (1964) (acquired firm controlled 1.3% of the relevant market); *Stanley Works*, 469 F.2d at 500–01 (condemning a merger between a company with 22% market share and one controlling only 1%).

[25] An example of Wilkinson's competitive vigor can be seen in its comparative advertisements which prompted Gillette to file suit against Wilkinson in early 1989.

[26] Atlanta Constitution, Jan. 20, 1989, at 1B.

[27] *See Alcoa*, 377 U.S. at 281.

[28] Department of Justice Merger Guidelines § 3.12, *reprinted in* 49 Fed. Reg. 26,823, 26,831 (June 29, 1984) (cited hereinafter as "Merger Guidelines").

[29] *Id.* § 3.11.

[30] *See* Mem. in Support of T.R.O. at 27. The measurement in the text is based on unit sales market shares; dollar share market shares would yield an even higher HHI. *See id.* (pre-acquisition HHI of 4476, post-acquisition HHI of 4604, increase of 128).

[31] *See* Merger Guidelines § 3.11. The facts which may show "extraordinary cases" such as changing market conditions, ease of entry, and lack of ease and profitability of collusion are not present here. *See id.* §§ 3.2, 3.3, 3.4.

[32] *California v. American Stores Co.*, 697 F. Supp. 1125, 1130–31 (C.D. Cal. 1988), *aff'd in part, rev'd in part*, 872 F.2d 837 (9th Cir. 1989) (post-merger HHI of 1250), *rev'd on other grounds*, 58 U.S.L.W. 4529 (May 1, 1990); *FTC v. Illinois Cereal Mills, Inc.*, 691 F. Supp. 1131, 1138 (N.D. Ill. 1988) (post-acquisition HHI of 2606), *aff'd*, 868 F.2d 901 (7th Cir. 1989); *FTC v. PPG Indus.*, 628 F. Supp. 881, 884–85 (D.D.C. 1986), *aff'd in part, rev'd in part*, 798 F.2d 1500, 1503 (D.C. Cir. 1986) (finding hold separate order inadequate, and injunction more appropriate where HHI increased from 1943 to 3295).

B. Various Market Characteristics Will Enhance the Abillity of Gillette To Transform Its Dominant Position Into Monopoly Power

The presumptive illegality of an acquisition as established by market share and concentration analysis can be affected by special characteristics of the particular market involved.[33] In the instant case, however, the anticompetitive effects of Gillette's acquisition of Wilkinson directly, or indirectly by acquiring interest in Eemland, are exacerbated rather than exonerated by market conditions. The transaction reinforces Gillette's ability to use its existing dominant position in an anticompetitive way and increases the likelihood of a Gillette monopoly.[34]

1. Entry Barriers in the Wet Shaving Razor Blade Market Are Extremely High

As alleged by the Government in its pleadings in the instant case, barriers to entry in the wet shaving razor blade market are extremely high.[35] Wet shaving blade production is capital intensive and requires extensive manufacturing capabililties, distribution networks and research and development to launch a new product.[36] Because of the importance of brand name recognition [37] and the tie between razors and blades, the benefits of a new product do not rapidly materialize.

2. The Tie Between Razors and Blades

The wet shaving business consists of the sale of double-edged blades and blades in a plastic cartridge for insertion into a razor handle and the sale of disposable razors with attached blades.[38] The handle and blade combined are known as permanent shaving system products (as opposed to disposable razors), and are the most profitable products.[39] The market for razors is linked to the market for blades. Market research confirms that 80% of consumers buy the same brand of blade as razor. Hence, one of the keys to success in the razor blade market is success in the razor market. Gillette is already dominant in the razor market, and by acquiring Wilkinson, Gillette would command over 75% of the U.S. market in razors. By focusing on the razor market, Gillette can drive out its competitors in the blade business.

3. The Importance of Technology

As Gillette has stated, technology, and the research and development which lead to technological innovations, are the lifeline of the wet shaving razor blade business.[40] In connection with its acquisition of the Wilkinson business outside of the United States and the EEC, Gillette will acquire Wilkinson technology. Gillette will acquire the patents and know-how,[41] of a company that has been a pioneering force in wet shaving technology far beyond what its relatively small size would indicate. The decree, however, is silent concerning the use Gillette might make of Wilkinson technology in the United States.

Specifically, Gillette has acquired three important Wilkinson technologies. First, Gillette acquires Wilkinson's technology for the blue lubricating strip.[42] Gillette has referred to the lubricating strip as one of the most advanced technological features that contributes to improved shaving performance.[43] There are only two technologies for the lubricating strip which, by releasing a lotion during the course of a shave, enhances the smoothness of shaving.[44] One, which is water, soluble, is currently possessed by both Gillette and Warner-Lambert. The other, called the blue lubricating strip, is nonwater soluble and belongs to Wilkinson.[45] Since the blue lubricating strip provides for a smoother shave without leaving residue on the face, it has been characterized as a "breakthrough in shaving technology." [46] This acquisition gives Gillette access to both technologies and is thereby an impediment to Wilkinson's gaining market share due to its unique lubrication process. Moreover, the lubricating strip distinguishes the high-end "plus" segment of the wet shaving razor market,[47] and the "plus" segment is a fast growing market segment.[48] Gillette already commands over 85% of the "plus" market segment [49] and with access to the unique Wilkinson technology this share will further increase.

The acquisition also gives Gillette access to the Wilkinson retractable sliding cap for single blade disposable razors.[50] This cap protects the blades during storage and allows the manufacturer to skip production of separate plastic blade covers thereby reducing manufacturing costs. Gillette has the capability to apply this technology to its twin blades and thereby increase its share of the disposable razor segment of the market.

Gillette is also acquiring access to the technological progress Wilkinson has made on plastic insert molding—a sophisticated technique for implacing razor blades into cartridges.[51] This technique is utilized instead of building the cartridge in successive stages in the production line which would dramatically reduce manufacturing costs. Gillette has also acquired other significant Wilkinson technologies and trade know-how.[52]

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[33] *See Philadelphia Nat'l Bank*, 374 U.S. at 363.

[34] In a private action brought by Gillette, Wilkinson alleged that Gillette possessed monopoly power. *See* Wilkinson Sword Answer and Counterclaim ¶ 80, *Gillette* v. *Wilkinson Sword, Inc.*, 89 Civ. 3586 (S.D.N.Y. filed June 16, 1989) (cited hereinafter as "Wilkinson Sword Answer").

[35] *See* Declaration of Michael Merwin ¶ 3, Mem. in Support of T.R.O. (at least a 10% price increase is necessary to spur entry). Generally existence of low entry barriers is a factor used to rebut the presumption of illegality inferred from high market concentrations. *See, e.g., McCaw Personal Communications, Inc.* v. *Pacific Telesis Group*, 645 F. Supp. 1166, 1174 (N.D. Cal. 1986); Merger Guidelines § 3.3.

[36] *See* Mem. in Support of T.R.O. at 30; Aff. of William Nye, *id.* at 6–7.

[37] Nye Aff., *id.* at 6–7.

[38] Gillette Complaint ¶ 8.

[39] *See id.*; Atlanta Cosntitution, Jan. 20, 1989, at 1B.

[40] *See, e.g.*, Gillette 1989 Annual Report at 4–6 (technological innovation is "the cornerstone" of Gillette's preeminence).

[41] Memorandum in Opposition to the United States' Motion for a Temporary Restraining Order and Preliminary Relief at 5–6; Statement of Thomas Cullen, Attorney for Gillette, Transcript of Temporary Restraining Order before the Honorable Thomas F. Hogan at 24, *United States* v. *Gillette*, Civ. Action No. 90–0053 (D.D.C. Jan. 11, 1990) (cited hereinafter as "T.R.O. Hearing"). Patent acquisitions are subject to the antitrust laws. *SCM Corp.*, 645 F.2d at 1205.

[42] *See* U.S. Patent No. 4,875,287 (Oct. 24, 1989).

[43] Gillette Complaint ¶ 10.

[44] *See* U.S. Patent No. 4,875,287 (Oct. 24, 1989) (coefficient of friction of the skin-engaging portion is reduced); Gillette 1989 Annual Report at 4–5 (lubrication provides extra smoothness).

[45] U.S. Patent No. 4,875,287 (Oct. 24, 1989); Gillette Complaint ¶ 17.

[46] Fahey, "Wilkinson cuts in; New razor to take on Gillette's Atra," Advertising Age, Nov. 28, 1988.

[47] *See* Wilkinson Sword Answer ¶ 58 (the market includes an industry-recognized submarket consisting of "plus" shaving systems which are distinguished by the presence of some type of lubricating or friction-reducing strip on the cartridge).

[48] *See* Gillette 1989 Annual Report at 2 (blade products featuring the lubricating strip and marketed under the "Plus" name have become increasingly popular).

[49] *See* Wilkinson Sword Answer ¶ 61.

[50] *See* U.S. Patent Nos. 4,501,067 (Feb. 26, 1985); 4,715,120 (Dec. 29, 1987); 4,860,499 (Aug. 29, 1989).

[51] *See* U.S. Patent Nos. 4,852,254 (Aug. 1, 1989); 4,690,018 (Sept. 1, 1987); 4,489,627 (Dec. 25, 1984).

[52] *See, e.g.* U.S. Patent No. 4,483,068 (Nov. 20, 1984) (foil rasp razor which is important to women's shaving); U.S. Patent No. 4,200,976 (May 6, 1980) (wire blade technology which might have posed a threat to Gillette's Sensor); U.S. Patent Nos. 4,281,455 (Aug. 4, 1981); 4,658,505 (April 21, 1987) (multiplane pivoting razor head which is technology belonging exclusively to Wilkinson); U.S. Patent No. 4,601,101 (July 22, 1986) (travel razor with storage features not comparable to any Gillette product). Wilkinson also possesses sophisticated and unique know-how in the grinding, honing, strapping, and lapping processes that comprise blade finishing—an area in which Gillette is not as advanced.

Gillette is already the leader in wet shaving technology and innovation,[53] and it outspends other companies on research and development of razors and blades. The transaction gives Gillette access to significant technology. Although Gillette may disclaim any intention to use the acquired technology in the United States, the point is that Gillette has now obtained access to the Wilkinson technology and the decree is deficient in failing to address the issue of its use in the United States. Gillette should be enjoined from using the Wilkinson technology in this country.

V. This Court Should Not Approve the Proposed Final Judgment Because the Injunctive Relief Accepted by the Government in Lieu of Divestiture Does Not Protect the Public Interest

In the Proposed Final Judgment, Gillette, with the acquiescence of the government, seeks to escape a judgment that is acquisition of the Wilkinson U.S. business is illegal by yielding ownership of Wilkinson to Eemland in the United States and the EEC, while retaining a substantial stock and creditor position in Eemland. Gillette cannot escape the reach of Section 7 by this strategy.

Under the Proposed Final Judgment, Gillette will remain one of the largest, if not the largest, shareholder in Eemland and one of the largest, if not the largest, creditor. Common sense compels the conclusion that the presence of Gillette as a substantial stockholder and major creditor will influence Eemland in its competitive efforts against Gillette.[54] No injunctive provisions can alter this reality. Manifestly, a debtor will take into account the impact of its activities on a creditor, and no rational entity will ignore the business interests of a major shareholder. One must expect that Eemland will be inhibited from engaging in aggressive competitive activities such as Wilkinson's comparative advertising campaign that provoked Gillette's private action against Wilkinson in 1989.[55] Moreover, a stock or debt acquisition by a competitor may have a profoundly demoralizing effect on employees.[56]

Indeed, despite the conclusory provision in the Proposed Final Judgment prohibiting Gillette from attempting to use its stockholder and creditor status position to exert influence over Eemland,[57] Gillette retains the ability to use its leverage as a stockholder and creditor to pressure Eemland to adopt marketing, product, or pricing strategies that are not adverse to Gillette. For instance, the Proposed Final Judgment does not address the threat Gillette poses to Eemland by its ability to sell its Eemland debentures to a potentially hostile party. The Supreme Court has similarly recognized that the power of an acquiring firm to sell stock it has purchased constitutes an impermissible potential for exercising influence notwithstanding an injunctive provision against exercising such influence.[58]

In addition, the Proposed Final Judgment does not adequately restrict the flow of competitively sensitive information between Gillette and Eemland. The decree only prohibits Gillette and Eemland from communicating "in an effort to persuade the other to agree" regarding such matters as present or future prices, marketing plans, sales forecasts, and the like.[59] Thus, absent proof that the communication is part of an effort to agree, Eemland presumably may communicate with Gillette about the foregoing topics. Under the antitrust laws there must be an arm's-length relationship between two rivals. We submit that Gillette must occupy the same status vis-a-vis Eemland and Wilkinson with respect to the communication of market information as Gillette occupies with respect to any other competitor, such as BIC or Warner-Lambert. We ask: Why does the decree not unequivocally prohibit the exchange of all market-related information between Gillette and Eemland?

Gillette's debt and equity interest in Eemland links the two companies together. To the extent Gillette and Eemland directly compete in the United States and EEC, Gillette's profits in these markets may mean a loss in its investment in Eemland. This gives Gillette an incentive to structure its business strategies in such a way as to reduce competitive overlap in products, advertising, promotions, and even price with Wilkinson products. Although under the Proposed Final Judgment there can be no "agreement," Gillette, merely through its access to Eemland business information, can structure its own strategies so that there is little or no competition with Wilkinson products or promotions.

VI. The Public Interest Requires Divestiture

The unjunctive provisions to which the government has acquiesced are not sufficient to protect the public interest in this case. When a violation of Section 7 is found, the appropriate relief is divestiture. To quote the Supreme Court: "[t]he very words of § 7 suggest that an undoing of the acquisition is a natural remedy." [60] It is "the remedy best suited to redress the ills of an anticompetitive merger." [61]

In structuring the Proposed Final Judgment, the Department of Justice has surprisingly ignored one of the seminal cases in antitrust history, the Supreme Court's decison in *United States* v. *E.I. Du Pont de Nemours & Co.*[62] In that case du Pont had acquired 23% of the common stock of General Motors, a most important customer for its paints and finishing products. In lieu of divestiture, the District Court had ordered "partial divestment" requiring du Pont to transfer its voting rights in most of the GM stock to certain du Pont shareholders. The District Court permitted du Pont to retain its GM shares but enjoined du Pont from controlling or influencing certain GM management decisions.[63] The Supreme Court held that this decree was inadequate and ordered full divestiture.[64] The Court pointed out that the District Court must aim not only to prevent actual monopoly, but a tendency towards monopoly.[65] The relief must be a remedy which "reasonably assures the elimination of that tendency." [66]

The Supreme Court criticized the District Court's decree in *du Pont* which, in many respects, resembles the

[53] Gillette Complaint ¶ 5. In its 1989 Annual Report, Gillette stated that its recently introduced Sensor system (a permanent shaving system) should provide a base for Gillette's long-term growth. Gillette 1989 Annual Report at 2.

[54] Courts have noted this potential effect of partial stock acquisitions of competitors. The acquired company's competitive energy may be undermined or redirected by the knowledge that its activities would be adverse to one of its stockholders, or conversely, the acquiror may lose some of its incentive for competition since such activity would adversely affect its investment in its competitor. *See In the Matter of Golden Grain Macaroni Co.*, 78 F.T.C. 63, 172 n.20, 173–77 (Jan. 18, 1971), *modified in other parts*, 472 F.2d 882 (9th Cir. 1972), *cert. denied*, 412 U.S. 918 (1973).

[55] *See generally Gillette Complaint.*

[56] *See F. & M. Schaefer Corp.* v. *C. Schmidt & Sons, Inc.*, 597 F.2d 814, 818 (2d Cir. 1979) (per curiam) (noting the risk of decreased organizational morale among acquired company's executives who would be unsure to whom the fruits of their efforts would go). *See also* Statement of Kenneth Frankel, T.R.O. Hearing at 37 (it is likely that there will be a "human and people problem" and that executives of Wilkinson (USA) will leave).

[57] *See* Proposed Final Judgment § VI.2.

[58] *See du Pont*, 366 U.S. at 332–33.

[59] Proposed Final Judgment, § VI.1.

[60] *Du Pont*, 366 U.S. at 329 (1961).

[61] *American Stores*, 58 U.S.L.W. at 4532.

[62] 366 U.S. 316 (1961).

[63] *See id.* at 319–21, 333.

[64] *See id.* at 334.

[65] *See id.* at 325–26.

[66] *Id.*

Proposed Final Judgment here. The decree (§ VI.2) enjoins Gillette from using "its position as a holder of Eemland's securities to exert any influence over Eemland in the conduct of Eemland's wet shaving razor blade business." We ask: How will this provision be enforced? As noted by the Supreme Court in *du Pont*, "the public interest should not in this case be required to depend upon the often cumbersome and time-consuming injunctive remedy." [67] The Court pointed out that:

[s]hould a violation of one of the prohibitions be thought to occur, the Government would have the burden of initiating contempt proceedings and of proving by a preponderance of the evidence that a violation had indeed been committed. . . . And the policing of an unjunction would probably involve the courts and the Government in regulation of private affairs more deeply than the administration of a simple order of divestiture.[68]

These difficulties are exacerbated in this case because the acts being policed and supervised will take place overseas.

Finally, there is another important consideration that militates heavily against accepting injunctive relief in a merger case. As the Court notd in *du Pont*, "an injunction can hardly be detailed enough to cover in advance all the many fashions in which improper influence might manifest itself." [69] In contrast, the Court characterized divestiture as the "most effective" and "most important" of antitrust remedies,[70] one that is "simple, relatively easy to administer, and sure. It should always be in the forefront of a court's mind when a violation of § 7 has been found." [71] In the present case, "the public is entitled to the surer, cleaner remedy of divestiture." [72]

VII. Conclusion

For the foregoing reasons, we respectfully submit that the Proposed Final Judgment should not be approved by this Court.

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Dated: May 11, 1990.

[67] *Id. at 333-34.*

[68] *Id.* (footnote omitted).

[69] *Id.*

[70] *Id.* at 326, 330-31.

[71] *Id.* at 330-31.

[72] *Id.* at 334.

In the United States District Court for the District of the District of Columbia

United States of America, Plaintiff, v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Defendants. Civil Action No. 90-0053-TFH.

Additional Comments by Warner-Lambert Company Regarding the Proposed Final Judgment

To: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Room 10-437, Judiciary Center Building, 555 4th Street NW., Washington, DC 20001.

Warner-Lambert Company, pursuant to the Tunney Act, (15 U.S.C. § 16 (b-h)), respectfully submits the attached preliminary opinion of the Directorate General for Restrictive Practices, Abuse of Dominant Positions and other Distortions of Competition, Commission of the European Communities (May 8, 1990) as additional Comments on the Proposed Final Judgment in the above-stated action.

Warner-Lambert Company believes that the attached preliminary opinion tends to confirm the threat of competition posed by Gillette's continued ownership of equity and debt interests in Eemland. It also shows the importance of certain issues such as the technology transfer and free flow of information between Gillette and Eemland facilitated by the transaction and left untouched by the Proposed Final Judgment.

Respectfully submitted,

Melvin Spaeth,

Bar No. 043943.

Arnold & Porter,

1200 New Hampshire Avenue NW., Washington, DC 20036, (202) 872-6669.

Attorney for Warner-Lambert Company

Dated: May 30, 1990.

Commission of the European Communities

[Brussels, MR/pa, 8, V. 1990]

Van Bael & Bellis, Avocates, Ave Louis 222, 1050 Bruxelles

Re: Cases Nos. IV/B-2/33.440 Warner Lambert/Gillette & Others IV/B-2/33.486 BIC/Gillette & Others

Dear Sirs,

Please find enclosed an extract from the preliminary opinion of the Directorate-General for competition.

This preliminary opinion has been sent to Gillette and Eemland.

Yours faithfully,

F. Giuffrida,

Head of Division.

Enclosure.

13. The compliant of Warner Lambert

As regards Article 86 (1) the complainant has alleged that there is a likelihood that Gillette because of tis acquisition of W.S. outside the EC and US (especially in Switzerland, Austria, and Sweden, all adjacent to the EEC) will influence the commercial conduct of W.S. operations in EC. DG IV agrees that there is a strong likelihood that competition between the two firms will not be very strong. DG IV therefore tends to agree that the shareholding results at least in some influence on the other company's commercial policy which gives rise to an abuse of a dominant position. (11) DG IV agrees that the acquisition of complementary technology must give Gillette a powerful advantage in current technology and in research and development. (III) DG IV considers that there is a great danger that Gillette will become privy to confidential and proprietary information regarding its competitor Eemland.

As regards Article 85

DG IV's view largely corresponds with that of the complainant. Furthermore, the Commission considers it more probable that Gillette will concert with Eemland rather than compete fiercely with it. Indeed Eemland in its observations states that it would not be in Gillette's best interests to engage in promotion and selling strategies in countries adjacent to the EC. As already stated DG IV considers that the parties will probably share the market on a segment basis (up-market and down-markets).

14. The BIC complaint

On 14 March 1990 a complaint was filed by BIC against Gillette, Wilkinson Sword Inc., Swedish Match B.V. and Stora. This complaint forms the subject matter of file No. IV/B-2/33.486.

The dangers foreseen by BIC are:

—abuse of a dominant position;
—organising the market so that the W.S. product is sold in the lower end of the market at cut-throat prices to the detriment of competitors while Gillette caputures the upper segment of the market;
—alternatively W.S. (Eemland) will disappear because of Gillette's intervention;
—cooperation as regards sales, advertising campaigns promotions and purchasing basic material such as steel.

DG IV agrees that these dangers are real. It should be noted that the information memorandum sent to banks interested in participating in the syndication of the $409 mlo senior debt lists among the strategic objectives of Eemland "to maintain and develop a core European Wilkinson Sword shaving business." It seems most unlikely that Eemland would make such a representation unless it had some assurance from Gillette that the W.S. business in the EC would not be subject to fierce competition and that S.W. products in the EC would not disappear.

15. Therefore DG IV comes to the preliminary conclusion that the transaction may well violate both Article 85(1) and Article 86.

In the United States District Court for the District of the District of Columbia

United States of America, Plaintiff v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Berglsags AB, and Eemland Management Services BV*, Defendants. Civil Action No. 90-0053-TFH.

Comments to the United States by BIC Corporation regarding the proposed final judgment

To: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Room 10-437, Judiciary Center Building, 555 4th Street NW., Washington, DC 20001.

BIC Corporation, pursuant to the Tunney Act (15 U.S.C. § 16 (b-h)), respectfully submits as its comments on the Proposed Final Judgment the attached Memorandum which has been filed in the District Court in the present action.

The Proposed Final Judgment is deficient in the following respects:

1. The proposed judgment fails to require divestiture by Gillette of the equity and debt securities and other assets of Eemland held by Gillette. The proposed judgment allows the dominant firm in the wet shaving blade business, a highly concentrated industry, to acquire substantial equity and debt interests in one of its few competitors. In such a case of clear violation of Section 7 of the Clayton Act, injunctive relief is totally unacceptable as a substitute for complete divestiture. The proposed judgment fails to accord with established Supreme Court precedent. *See United States v. E. I. duPont de Nemours & Co.*, 366 U.S. 316 (1961).

2. The retention of 23% equity interest and 50% of subordinated debt financing cannot be justified as being for "investment only" especially in the case of a direct competitor.

3. The so-called safeguards against Gillette achieving anything more than its investment objectives are woefully inadequate. At a minimum, the proposed judgment should: (a) restrict all communications between Gillette and Eemland on competitively sensitive issues such as future prices, marketing plans, future production schedules and technological development; (b) rescind and proscribe the transfer of technology between Gillette and Eemland unless made available to all industry entrants; and (c) limit all transactions between Gillette and Eemland.

The grounds for the forgoing objections are set out in the attached memorandum.

Respectfully submitted,

Owen M. Johnson, Jr., P.C.

Bar No. 151613,

Akin, Gump, Strauss, Hauer & Feld,

1333 New Hampshire Avenue NW., Washington, DC 20036.

Attorney for BIC Corporation

Dated: June 4, 1990.

In the United States District Court for the District of the District of Columbia

United States of America, Plaintiff, v. *The Gillette Company, Wilkin Sword, Inc., Stora Kopparbergs Berglags AB, and Eemland Management Services BV*, Defendants. Civil Action No. 90-0053-TFH.

Memorandum by BIC Corporation in Opposition to Proposed Final Judgment

BIC Corporation ("BIC") urges the Court to reject the Proposed Final Judgment in this antitrust action because the relief accepted by the Government is contrary to the public interest standard of the Tunney Act.[1] BIC further agrees with the arguments advanced by Warner-Lambert Company in its Memorandum in Opposition to the Proposed Final Judgment, dated May 11, 1990, and hereby incorporates them by reference in this Memorandum. BIC also supports Warner-Lambert's Motion to Compel Public Disclosure of the Transactional Documents, without which informed public comment on the Proposed Final Judgment is made difficult and incomplete.

BIC, like Warner-Lambert, is one of defendant Gillette Company's few remaining competitors in the wet razor blade market in the United States. BIC agrees with the Government and with Warner-Lambert that, given Gillette Company's overwhelmingly dominant position in the wet razor blade market, the proposed acquisition of Wilkinson Sword's U.S. business by Gillette would clearly be an antitrust violation under any standard. That acquisition occurred; and the Government apparently does not contest the absence of any Hart-Scott premerger notification. Thus, the only issue before the Court is the adequacy of the relief provided by the Proposed Final Judgment. Simply put, the relief provided is not divestiture. Rather than rescind the unlawful transaction in its entirety, the Proposed Judgment would validate a partial rescission pursuant to which the European acquisition vehicle, Eemland Management Services BV ("Eemland"), keeps both the U.S. and European assets of the Wilkinson Sword business (Gillette itself keeping Wilkinson's other worldwide assets), and Gillette retains a 23% interest in Eemland's equity and a major ownership of Eemland's debt.

We agree with Warner-Lambert that it is impossible to reconcile this Proposed Judgment with *United States* v. *E.I. du Pont de Nemours & Co.*, 366 U.S. 316 (1961). There, as in the Proposed Judgment here, the District Court was prepared to permit du Pont to retain a 23% equity interest in General Motors, subject to safeguards against influencing General Motors' management decisions. The Supreme Court, however, flatly rejected the adequacy of such safeguards, holding that complete divestiture was the necessary relief. The argument for divestiture is even stronger in this case, where Gillette and Eemland/Wilkinson should be *direct competitors* (du Pont was merely a vertical supplier of automotive finishes to General Motors), and where Gillette's market share in the razor blade market not only far exceeds du Pont's share in automotive finishes, but indeed approaches monopoly proportions under standard antitrust analysis.

Put another way, if Gillette were seeking this Court's approval of its proposed divestiture of Wilkinson Sword's U.S. assets to Eemland under an entered antitrust order providing for the divestiture of such assets, it seems inconceivable that the Court or the Government would sanction divestiture to an acquirer in which the divesting party retains a 23% equity interest, let alone a substantial debt interest. It is true that the statutes governing anticompetitive mergers and acquisitions recognize what is called an "investment only" exception. However, if the Government is overruling the *du Pont Case* sub silentio, by holding that the "investment only" exception can apply to retained equity interests of as much as 23% (and between direct competitors), then the Government should better articulate the standards and safeguards required for such "investments" than is done in the Proposed Judgment. This is a much higher level of equity ownership than has previously been contempated or countenanced under the "investment only" exception. And it is further compounded by Gillette's even greater percentage ownership of Eemland's debt, a fact which may inhibit Eemland's independence of management even more than Gillette's ownership of its equity if Eemland is, as it appears to be, highly leveraged.

Even if the *du Pont Case* is not to be followed and complete divestiture of

[1] 15 U.S.C. § 16 (1988).

Gillette's interest in Eemland required, it seems apparent that the so-called safeguards in the Proposed Judgment are inadequate. First, as Warner-Lambert has noted, there should be an absolute proscription against *any communication* between Gillette and Eemland relating to all business-sensitive management decisions, such as prices, budgets, marketing, product development, etc. Second, the Proposed Judgment fails totally to rescind the transfer of Wilkinson's highly-prized technology that Gillette has already unlawfully acquired. The Proposed Judgment's provisions for cross-licenses between Gillette and Eemland is a poor substitute for meaningful divestiture in the technological area. Wilkinson's technology in the hands of Gillette puts competitors in a far more vulnerable position that would Wilkinson's technology in the hands of Eemland or some other (smaller and lawful) acquirer of Wilkinson Sword. If it is impossible to rescind the unlawful transfer of Wilkinson's know-how that has already occurred, then the same technology should be made available, royalty-free, to Gillette's few remaining competitors, such as BIC and Warner-Lambert. Third, the Proposed Judgment is inadequate insofar as it proscribes only agency relationships between Gillette and Eemland. *All* inter-company transactions between Gillette and Eemland/Wilkinson should be proscribed, e.g., purchase/sale arrangements, distributorships, joint research activities, cross-licensing of technology, and comanufacturing arrangements.

We do not doubt the Government's good intentions in bringing this suit and in atempting to resolve it. Unfortumately, the Proposed Judgment falls so far short of its objectives as to be an embarrassment to the Government. Not only does it fly in the face of totally pertinent Supreme Court precedent; but it illustrates the folly of thinking that meaningful divestiture can have occurred where the divesting party ends up with as many of the indicia of ownership as Gillette would retain here. Who can realistically think that this "solution" would really restore competition between Gillette and Wilkinson Sword? Worse yet, if the "Eemland Gambit" should work, then would the alleged independence of Eemland foreclose European antitrust authorities from challenging the even-greater market concentration implications of the Gillette-Eemland/Wilkinson combination within their jurisdictions? Conversely, if European antitrust authorities do see through the "Eemland Gambit" device and do attack the Gillette-Eemland relationship, then the Proposed Final Judgment will stand condemned as an example of inadequate antitrust enforcement in the United States.

BIC is admittedly a competitor of Gillette. Our comments will necessarily be read in that light. However, when BIC was a relatively new entrant into the United States wet razor blade business, it was prevented by the antitrust authorities from acquiring a small blade manufacturer, American Safety Razor, who is smaller today and less well-known than Wilkinson Sword. *See* BIC Pen Corporation, 89 F.T.C. 139 (1977). Perhaps we can be forgiven for wondering over the even-handedness of an antitrust enforcement policy that now would permit Gillette, the giant of the industry, to retain so great an interest in Eemland/Wilkinson.

For the foregoing reasons, we submit that the Proposed Final Judgment should be rejected in its entirety and complete divestiture of all of Gillette's retained interests in Wilkinson Sword and Eemland ordered. At a minimum, the Proposed Judgment should spell out in greater detail the safeguards necessary to ensure that Gillette's retained 23% equity interest in Eemland truly does constitute an "investment only" interest.

Respectfully submitted,

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Attorney for BIC Corporation.

In The United States District Court for the District of the District of Columbia

United States of America, Plaintiff, v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB., and Eemland Management Services BV*, Defendants. Civil Action No. 90-0053-TFH.

Motion to participate as amicus curiae and to file opposition to proposed final judgment

To the Honorable District Judge:

BIC Corporation ("BIC") pursuant to the Tunney Act, 15 U.S.C. § 16(f)(3), hereby moves for leave to participate as *amicus curiae* in the present action and for leave to submit the attached Memorandum in Opposition to the Proposed Final Judgment. The Tunney Act, 15 U.S.C. § 16 (d), (e), and (f), provides that the Court must determine that the consent judgment "is in the public interest." The statute (§ 16(f)(3)) explicitly authorizes the Court, in making its determination, to permit "full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae."

I

BIC respectfully requests that it be granted leave to participate as *amicus curiae* to present written submissions and oral argument to the court to demonstrate that the proposed judgment is not in the public interest and that the proposed relief is clearly inadequate.

1. The proposed judgment is deficient for failing to require divestiture by Gillette of the equity and debt securities and other assets of Eemland held by Gillette. The proposed judgment allows the dominant firm in the wet shaving blade business, a highly concentrated industry, to acquire substantial equity and debt interests in one of its few competitors. In such a case of clear violation of Section 7 of the Clayton Act, injunctive relief is totally unacceptable as a substitute for complete divestiture. The proposed judgment fails to accord with established Supreme Court precedent. *See United States v. E. I. du Pont de Nemours & Co.*, 366 U.S. 316 (1961).

2. The retention of 23% equity interest and 50% of subordinated debt financing cannot be justified as being for "investment only" especially in the case of a direct competitor.

3. The so-called safeguards against Gillette achieving anything more than its investment objectives are woefully inadequate. At a minimum, the proposed judgment should: (a) restrict all communications between Gillette and Eemland on competitively sensitive issues such as future prices, marketing plans, future production schedules and technological development; (b) rescind and proscribe the transfer of technology between Gillette and Eemland unless made available to all industry entrants; and (c) limit all transactions between Gillette and Eemland.

II

BIC should be allowed to participate as *amicus curiae* to assist the Court in its determination that the entry of the proposed judgment "would be in the public interest." As the Government has acknowledged, only five companies supply wet shaving razors and blades in the U.S.—two of whom are involved in this merger. BIC is one of the only three other companies and thus is uniquely qualified to advise the Court about the nature of competition in the market, including the role of new technology and development. BIC's participation would ensure that the purposes of requiring a public interest determination under the Tunney Act are satisfied.

For the foregoing reasons, the Court should grant BIC's Motion to Participate as *Amicus Curiae* and to file the Memorandum in Opposition to the Proposed Final Judgment.

Respectfully submitted,

Owen M. Johnson, Jr., P.C.,
Bar No. 151613
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1333 New Hampshire Avenue NW., Washington, DC 20036.
Attorney for BIC Corporation

Dated: June 4, 1990

In The United States District Court for the District of the District of Columbia

United States of America, Plaintiff, v. *The Gillette Company, Wilkinson Sword, Inc., Stora Kopparbergs Bergslags AB, and Eemland Management Services BV*, Defendants. Civil Action No. 90-0053-TFH.

United States' Response to Comments of the Warner-Lambert Company and BIC Corporation Regarding the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States of America files this response to the comments of the Warner-Lambert Company and BIC Corporation regarding the proposed Final Judgment submitted for entry with the consent of defendants The Gillette Company, Wilkinson Sword, Inc., and Eemland Management Services BV in this civil antitrust proceeding.

I. INTRODUCTION

After carefully reviewing the comments, submitted by the Warner-Lambert Company and BIC Corporation, the United States remains convinced that entry of the proposed Final Judgment is in the public interest.

II. Background

On December 20, 1989, Stora Kopparbergs Bergslags AB ("Stora"), a corporation based in Sweden, contracted to sell its wet shaving, lighter, and match businesses throughout the world to Eemland Management Services BV ("Eemland"), a Netherlands corporation. Eemland was formed by a buyout group that included Gillette, certain managers of the businesses, and other investors. Stora's wet shaving businesses operated under the Wilkinson Sword trademark in the United States, Europe, and other areas of the world, and produced wet shaving razor blades and other wet shaving products. As part of the buyout plan, the buyout group contracted on the same date to sell the wet shaving businesses outside of the 12-nation European Community ("E.C.") to Gillette. These businesses included Wilkinson Sword, Inc. ("Wilkinson-USA"), the Atlanta, Geogria based firm the distributed in the United States and Canada Wilkinson Sword brand wet shaving razor blades and other wet shaving products manufactured by its affiliates abroad.

Eemland purchased the businesses from Stora for approximately $630 million, about one quarter of which came from Gillette at the time the contract was signed. Gillette purchased the non-E.C. wet shaving razor blade businesses for about $72 million. It also acquired about 23 percent of the non-voting equity shares of Eemland for about $14 million and subordinated debentures of Eemland for about $69 million. The non-voting equity shares will convert to voting shares under certain limited circumstances and interest on the debt will accrue as additional debt held by Gillette.

Consumers in the United States annually purchase over $700 million of wet shaving razor blades at the retail level. Five companies supply all but a nominal amount of these blades—Gillette, Wilkinson, Warner-Lambert Co. (Schick brand), BIC Corp. (BIC brand), and American Safety Razor Co. (Persona brand). Gillette has been the market leader for years and, in 1989, accounted for over 50 percent of all wet shaving razor blades sold in the United States, on a unit basis. In 1989, Wilkinson accounted for a substantial portion of those blades sold in the United States.

The United States instituted this civil proceeding on January 10, 1990. The complaint alleged that the acquisition by Gillette of the Wilkinson Sword wet shaving razor blade businesses of Eemland outside of the E.C. violated Section 7 of the Clayton Act, 15 U.S.C. § 18. In this connection, it was alleged that the effect of the acquisition by Gillette of the Wilkinson Sword non-E.C. wet shaving razor blade businesses and assets may have been substantially to lessen competition in the sale of such blades in the United States. The complaint prayed that the entire transaction be rescinded.

Shortly after this case was filed, Gillette, Eemland, and Wilkinson-USA voluntarily rescinded Gillette's acquisition of Eemland's wet saving razor blade business in the United States. Settlement negotiations ensued, resulting in the proposed Final Judgment.

III. Warner-Lambert's Position

Warner-Lambert contends that the proposed Final Judgment is deficient in the following respects:

(1) It does not provide for full divestiture by Gillette of its investment in Eemland.

(2) It, by implication, sanctions communications between Gillette and Eemland on competitively sensitive matters such as Eemland's future prices, marketing plans, future production schedules and technological developments.

(3) It does not adequately address the use in the United States of the Wilkinson Sword technology and know-how that Gillette is acquiring.

IV. In Urging Divestiture of Gillette's Investment in Eemland, Warner-Lambert Seeks to Undo a Transaction That the United States, in a Legitimate Exercise of Its Prosecutorial Discretion, Elected Not To Challenge

In its complaint initiating the civil action that the proposed Final Judgment would conclude, the United States charged that Gillette's acquisition of the non-E.C. Wilkinson Sword wet shaving razor blade businesses would violate Section 7 of the Clayton Act. *See* Complaint, ¶ 22. The relief requested was the undoing of the transaction through which Gillette's acquisition of the non-E.C. Wilkinson Sword wet shaving razor blade businesses would occur, which transaction included an investment by Gillette in Eemland.

Warner-Lambert's protestations to the contrary, the United States never concluded nor charged that any aspect of the transaction between Gillette and Eemland, other than the acquisition of the non-E.C. Wilkinson Sword wet shaving razor blade businesses violated Section 7 of the Clayton Act.[1] In particular, since Gillette had acquired Eemland's non-E.C. wet shaving razor blade businesses, including its businesses in the United States, Gillette's investment in Eemland was one made in a company that would not compete with Gillette in the United States. Thus, it was not the kind of investment that would merit a Section 7 challenge.

As noted earlier, shortly after the complaint was filed, Gillette, Eemland, and Wilkinson-USA agreed to rescind Gillette's acquisition of the United States Wilkinson Sword wet shaving razor blade business. This rescissions raised the issue of Gillette's investment in Eemland, because the latter had now become a competitor in the United

[1] The complaint's allegations of illegality are limited to "the effects of an acquisition by Gillette of the Wilkinson Sword wet shaving razor blade businesses and assets outside the 12-nation European Community." Complaint, ¶ 22

States. The United States could have opened an investigation to determine whether Gillette's investment was anticompetitive and warranted challenge under the antitrust laws. However, in a legitimate exercise of its prosecutorial discretion, the United States elected not to pursue such a course. Instead, since both Gillette and Eemland professed that Gillette's investment in Eemland was intended to be passive and since both companies were willing to agree to substantial limitations on Gillette's investment to ensure that passivity, the United States negotiated such restrictions in the proposed Final Judgment.

The United States determined that the public interest in preserving competition in the wet shaving razor blade market would be served best by acting in this manner. If an investigation has been undertaken to determine whether Gillette's investment in Eemland violated Section 7 of the Clayton Act, several complicated legal and factual issues would have had to be resolved. Many of those with information material to these issues, such as the major European stockholders in Eemland, may have been beyond the jurisdiction of the United States, rendering uncertain the prospects of the United States successfully completing the investigation. In any event, much of this investigation would have been conducted in Europe, which would have consumed substantial amounts of scarce prosecutorial resources.[2] If the United States ultimately determined to challenge Gillette's investment, substantial time and money would have had to be expended in litigation. Final resolution of the case, taking appeals into account, could have taken years. In the meantime, Gillette and Eemland would have been unconstrained by any judgment of a United States court. The United States concluded that taking such a course would severely jeopardize the public interest in competition, both in the short and long run. By adopting the course it did, the United States has enabled the public to benefit immediately from the safeguards contained in the proposed Final Judgment.[3]

In addition, even if after extensive investigation the United States had concluded that Gillette's investment in Eemland was anticompetitive and expended substantial time and resources in challenging this investment, it is uncertain that the United States would have prevailed and obtained greater relief than it has negotiated in the proposed Final Judgement.[4] Warner-Lambert contends that Gillette's acquisition of these interests constitutes a clear violation of Section 7. By ignoring the "passive investment" exception to Section 7, [5] Warner-Lambert significantly overstates the strength of such a claim.[6]

For example, in *Anaconda Co. v. Crane Co,* 411 F. Supp. 1210 (S.D.N.Y. 1975), Anaconda, the target of a hostile offer by Crane, sought a preliminary injunction to prevent the latter from acquiring 22.6 percent of its common stock, on the grounds that the acquisition would violate Section 7. Crane maintained that it sought the stock purely for investment purposes and submitted to the court a proposed order that enjoined Crane from: gaining a majority position in Anaconda's stock, seeking representation on its board of directors, or otherwise violation Section 7 of the Clayton Act. In a subsequent stipulation, Crane agreed to a further prohibition against its voting any Anaconda stock so as to bring about a substantial lessening of competition. In light of the above restrictions, and in the absence of any evidence contradicting Crane's representations, the court denied the request for a preliminary injunction, ruling that Anaconda failed to advance sufficient evidence that Crane's acquisition would not be passive.

In addition, in *American Crystal Sugar Co. v. Cuban-American Sugar Co.,* 152 F. Supp. 387 (S.D.N.Y. 1957), *aff'd.* 259 F.2d 524 (2d Cir. 1958), a private action alleging that a 23 percent stock acquisition violated Section 7,[7] the court held that, instead of divestiture:

> [A] permanent injunction be issed enjoining defendant from directly or indirectly voting any shares of stock of the plaintiff company which it may own or control, either directly or indirectly, . . . and from acquiring any direct or indirect representation on the board of directors of the plaintiff, and from acquiring additional stock of plaintiff.

Id. at 400. The Court noted that, in light of the above restrictions, divestiture was "not necessary." *Id.* at 401.[8]

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[2] The preliminary opinion of the Commission of the European Communities (May 8, 1990), submitted by Warner-Lambert, appears to confirm this. Even being on the same continent as Eemland and its shareholders, directors, officers, and managers, and having no jurisdictional barriers to the conduct of its investigation, the Commission still has yet to reach a final opinion as to the impact in Europe of the Gillette-Eemland transaction.

[3] The defendants have stipulated to comply with the terms of the proposed Final Judgment pending its entry by the court.

[4] This is clearly an appropriate consideration for the United States in exercising its prosecutorial discretion, as Judge Pratt observed in reviewing a proposed consent decree under the Antitrust Procedures and Penalties Act:

> The government has no assurance that it will prevail at trial. Even if it were confident in prevailing, it could not predict whether the relief obtained would differ substantially from that encompassed by the present settlement. The savings to the parties in time as well as money would be substantial.

United States v. Waste Management Inc., 1985-2 Trade Cas. (CCH) ¶ 66,651 at 63,047 (D.D.C. 1985).

[5] Section 7 of the Clayton Act provides that "[t]his section shall not apply to persons purchasing . . . stock *solely for investment* and not using the same voting or otherwise, to bring about, or in attempting to bring about, the substantial lessening of competition." 15 U.S.C. § 18 (emphasis added).

[6] Warner-Lambert, in its efforts to demonstrate that a challenge to Gillette's investment in Eemland would be a "sure winner," cites as dispositive authority several cases that deal with acquisitions of unrestricted, full-voting securities. *See* Warner-Lambert Comments, notes 17-27 and accompanying text. Because Gillette's investment in Eemland is sterilized, these cases, of course, are inapposite.

[7] *Anaconda* and *American Cyrstal* may be distinguishable since each was a Section 7 case brought by a private party rather than the United States; nevertheless, these cases suggest that a court could find divestiture of Gillette's investment unnecessary if Gillette accepts satisfactory restrictions on that investment.

[8] The retrictions imposed in *Anacoda* and *American Crystal Sugar* were much less exacting than those that would be imposed upon Gillette and Eemland in the proposed Final Judgement.

As detailed in the United States' Competitive Impact Statement, the proposed Final Judgement would prevent Gillette from voting its Eemland Stock. Gillette would be required to provide Eemland a proxy to cast any voting rights in Eemland that Gillette may obtain in the exact proportion of those votes cast by other holders of Eemland's securities. Also, Gillette would be restricted from engaging in the management of Eemland and would be barred from nominating any Eemland directors or having any Gillette representative serve as a manager, officer, director, advisor or consultant, or in any comparable position with or for Eemland. Moreover, the proposed Final Judgment would expressly prohibit Gillette from using or attempting to use its position as an investor in Eemland to exert any influence over Eemland's wet shaving razor blade business.

The proposed Final Judgment also would prohibit Gillette from using its creditor position in Eemland to prevent or restrict Eemland from refinancing or obtaining additional credit or capital. Additionally, it would bar Gillette from attempting to use its creditor position to initiate any action that reasonably could be expected to cause Eemland to become insolvent or bankrupt. It further would restrict Gillette from using its creditor position to oppose any bankruptcy or insolvency plan supported by Eemland.

The proposed Final Judgement would contain numerous other provisions designed to prevent Gillette from influencing the management of Eemland and to prohibit other possibly anticompetitive actions on the part of Gillette. The proposed Final Judgment would prohibit Gillette from reacquiring the Wilkinson Sword wet shaving razor blade business in the United States or othewise depriving Eemland of assets necessary to efficiently supply and support its wet shaving razor blade business in the United States. Also, the proposed Final Judgement would enjoin wet shaving razor blade purchase and sale transactions between Gillette and Eemland that would impair Eemland's ability to compete in the United States.

Finally, the proposed Final Judgment would grant the United States powerful investigative tools. First, for the purpose of securing of determining compliance, the United States would be entitled to

Continued

Warner-Lambert points to two competitive issues that it alleges together require diverstiture of Gillette's investment in Eemland: Gillette and Eemland now are "linked" because Gillette has an interest in Eemland; and Gillette can threaten to sell Eemland's debentures to a "hostile party" [9] if Eemland does not do what Gillette wishes.[10] The United States does not believe that these two arguments are such "sure winners" that no substantial risk exists that a court would decline to order divestiture based solely upon them. As already noted, Congress has created a passive investment exception to the Clayton Act. Thus, a court could well conclude that the fact that Gillette has invested in Eemland does not alone create a prohibited "linkage." Similarly, a court could rule that Gillette's ownership of the Eemland debentures is not improper.[11] Moreover, if Gillette were to threaten to dispose of Eemland's debentures to a hostile third party if Eemland did not comply with Gillette's wishes, it would violate the provision in the proposed Final Judgment prohibiting Gillette from attempting to use its position as an Eemland creditor to exert influence over Eemland's wet shaving razor blade business. Although Warner-Lambert also appears to contend that this prohibition would be difficult to enforce, the United States believes that a court might well not find this argument so persuasive that it would perforce order divestiture rather than rely on relief of the nature negotiated.

V. United States v. Du Pont is Not Controlling

Warner-Lambert argues that the Supreme Court's decision in *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316 (1961), is "squarely on point" and mandates a rejection of the proposed Final Judgment.[12] In *du Pont*, however, the United States endured lengthy litigation [13] and ultimately proved that du Pont's interest in General Motors was a violation of Section 7 of the Clayton Act.[14] Although not mentioned by Warner-Lambert, the Supreme Court in *du Pont* specifically distinguished the case before it, where a violation had been proven by the United States, from the case of a consent decree on the ground that "the circumstances surrounding such negotiated agreements are so different." *Id.* at 1252 n. 12. In the present case, the United States believes, as already noted, that the public interest is better served by the proposed Final Judgment than by long and expensive litigation that may yield the same or possibly less relief.

VI. The Proposed Final Judgment Would Not Sanction Anticompetitive Communications Between Gillette and Eemland

Warner-Lambert contends that the proposed Final Judgment somehow would sanction otherwise prohibited communications between Gillette and Eemland, because it would prohibit only certain communications. Warner-Lambert Comments, note 59 and accompanying text. Nothing could be further from the truth. The proposed Final Judgment would not in any way shelter future conduct from Section 1 of the Sherman Act, which prohibits anticompetitive agreements. Instead, the proposed Final Judgment supplements Section 1.

Specifically, the Final Judgment enjoins the defendants from "communicating in an effort to persuade the other to agree, directly or indirectly, regarding present or future prices or other terms or conditions of sale, volume of shipments, future production schedules, marketing plans, sales forecasts, or sales or proposed sales to specific customers." Thus, even in the absence of actual agreement, attempts to agree regarding any of the above-listed competitively sensitive issues would be prohibited by the proposed Final Judgment. Warner-Lambert contends that "Gillette must occupy the same status vis-a-vis Eemland and Wilkinson with respect to communication of market information as Gillette occupies with respect to any other competitor." *Id.* In fact, Gillette occupies a *more* restricted position vis-a-vis Eemland and Wilkinson-U.S.A. than it does with respect to other competitors, since even attempts to agree are prohibited.

Warner-Lambert contends that a complete ban upon the exchange of all market-related information should be imposed upon Gillette and Eemland. To prohibit all market-related communication, regardless of its purpose or effect, seems unnecessary. As discussed, communication done in an attempt to unreasonably restrain competition is prohibited by the decree, and the Sherman Act prohibits agreements that unreasonably restrain competition.

VII. The Proposed Final Judgment would prohibit Gillette's Use in the United States of Patents and Know-How Acquired From Eemland

Warner-Lambert contends that Gillette's acquisition of technology from Eemland will harm competition in the United States. Warner-Lambert opines that the proposed Final Judgment "is silent concerning the use Gillette might make of Wilkinson technology in the United States" and that "the decree is deficient in failing to address the issue of its use in the United States. Gillette should be enjoined from using the Wilkinson technology in this country."

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conduct "on-the-record" interviews with officers, employees and agents or the defendants. Also, the United States would be empowered to review all books, ledgers, accounts, coorespondence, memoranda and other records and documents under the control of the defendants relating to any matters contained in the proposed Final Judgment.

[9] Warner-Lambert fails to specify who might constitute a hostile third-party. The adjective "hostile" suggests that this thrid-party would intend to do Eemland harm. It is difficult to imagine any investor likely to purchase Gillette's Eemland debentures solely for the purpose of, say, forcing an event of default and throwing Eemland into bankruptcy. Moreover, Wanrner-Lambert has advanced no reason for the United States to believe that, even if such a hostile party did exist and the debentures were sold to it by Gillette, Eemland could not seek refinancing elsewhere.

[10] Warner-Lambert also raises a thrid issue, namely, that Gillette's investment in Eemland will have a demoralizing effect upon the latter's employees. Warner-Lambert relies upon F & M Schaefer Corp. v. Schmidt & Sons, Inc. 597 F.2d 814, 818 (2d Cir. 1979), as support for this proposition. Such reliance is misplaced because, in *Schaefer*, the acquisition of an unrestricted equity position was at issue, one which permitted voting.

[11] Warner-Lambert cites Metro-Goldwyn-Meyer, Inc. v. Transamerica Corp., 303 F. Supp. 1344, 1350–51 (S.D.N.Y. 1969), for the proposition that the acquisition of debt in a competitor is cognizable under Section 7. In that case, Transamerica, through a wholly-owned subsidiary, supplied 82 percent of the financing that enabled a particular investor to acquire "working control" of Metro-Goldwyn-Meyer. Metro-Goldwyn-Meyer was a major competitor of another subsididary of Transamerica, United Artists. Warner-Lambert fails to note that, despite Transamerica's status as a substantial, through indirect, Metro-Goldwyn-Meyer creditor, the court in that case held that, "in the absence of circumstances indicating a probability that the creditor would use its position to influence MGM . . . , we do not believe that such a debtor-creditor relationship should be categorically outlawed as a matter of law." *Id.* at 1350.

[12] Warner-Lambert contends that *du Pont* stands for the proposition that "injunctive relief is totally unacceptable as a substitute for complete divestiture." Warner-Lambert Comments, Section I. To the contrary, the Court found that divestiture, is not necessarily required in Section 7 cases. *du Pont*, 366 U.S. at 328 n. 9.

[13] In its 1961 opinion remanding for the district court to develop a divestiture plan, the Court noted that the United States had filed its complaint in 1949. *du Pont*, 366 U.S. at 318.

[14] In *du Pont*, the United States proved that du Pont was using its equity position in General Motors to assure General Motors' patronage, to the detriment of du Pont's competitors. The evidence suggested that du Pont's acquisition of General Motors stock was motivated at least in part by the expectation that it would render du Pont a preferred supplier of automotive products to General Motors. A former sales manager and vice-president of du Pont had become vice-president of the operations committee at General Motors. United States v. E.I. du Pont de Nemours & Co., 353 U.S. 586, 602 (1957). Also, a program had been instituted to maximize General Motor's patronage of du Pont. *Id.* at 603. Further, the two companies had long had the same chairman of the Board. *Id.* at 604.

Warner-Lambert Comments, Section IV.B.3.

To the contrary, the proposed Final Judgment would prohibit Gillette from using this technology in the United States. Although Section IV.2.b. would permit Gillette to retain intellectual property rights that pertain to the United States but are indivisible from rights that pertain to other areas, Gillette would be required to provide Eemland an exclusive license to those rights for the United States. Thus, under the proposed Final Judgment, Gillette could not use the wet shaving razor blade technology it obtained from Eemland for the United States.[15]

VIII. BIC'S Position

BIC adopts Warner-Lambert's comments. In addition, BIC urges that the proposed Final Judgment be rejected because:

(1) it does not rescind and proscribe the transfer of technology between Gillette and Eemland unless made available to all competitors;

(2) it does not prohibit all transactions between Gillette and Eemland.

BIC fails to explain why either of these restrictions are necessary. With respect to the first, as detailed earlier, Gillette has not really retained Eemland technology for the United States. Although it may retain certain indivisible rights, it must license those rights for the United States to Eemland exclusively. Thus, Gillette may not use these rights for the United States. With respect to the second proposed restriction, no explanation is offered to justify such a far-reaching prohibition, one that would condemn not just competitively neutral transactions but procompetitive ones as well. The Sherman Act remains in effect to prohibit anticompetitive transactions between Gillette and Eemland.

IX. Conclusion

After carefully reviewing the comments submitted by Warner-Lambert and BIC, the United States remains convinced that entry of the proposed Final Judgment is in the public interest.

Warner-Lambert and BIC contend that Gillette's investment in Eemland violates Section 7 of the Clayton Act. However, the complaint makes no such claim, alleging only that Gillette's acquisition of Eemland's non-E.C. wet shaving razor blade businesses violates Section 7. Indeed, at the time this proceeding was instituted, Eemland was not expected to compete in the United States wet shaving razor blade market.

Thus, Warner-Lambert and BIC overlook the fact that the United States has not determined that this aspect of the transaction warrants challenge under the Clayton Act. In lieu of undertaking such a time-consuming and costly investigation, the United States negotiated a settlement. This settlement has the distinct advantage of avoiding a protracted investigation and litigation, thus enabling the public to benefit immediately from the negotiated relief.

The proposed Final Judgment would effectively prevent Gillette from using its investment in Eemland to influence the conduct of the latter's wet shaving razor blade business. The proposed judgment: would ensure that Gillette will never have voting rights in Eemland, would prohibit Gillette from participating in the management of Eemland, would enjoin Gillette from using its status as an Eemland investor to influence Eemland, would forbid improper communication between Gillette and Eemland, would bar Gillette from using its creditor position in Eemland to undertake certain specified actions that could be detrimental to Eemland's business, would enjoin purchase transactions between Gillette and Eemland that would impair the latter's ability to compete in the United States, and would require Gillette to grant Eemland exclusive, royalty-free and irrevocable licenses for the use in the United States of certain patents and know-how that Gillette may have acquired from Eemland. The various provisions that would require the consent of, or notice to, the United States before certain actions can be undertaken, combined with those that would provide the United States with wide access to defendants' employees and documents, would allow the United States to monitor compliance with the proposed Final Judgment.

The proposed Final Judgment would contain a comprehensive package of relief. It would maximize the benefits to the public by combining reasonable effectiveness with prompt relief. Accordingly, the proposed Final Judgment should be entered by the Court.

Dated: June 28, 1990.

Respectfully submitted.

Sanford M. Adler.

Robert A. Milne,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, D.C. 20001, (202) 307-0567.

[FR Doc. 90-15937 Filed 7-9-90; 8:45 am]

BILLING CODE 4410-01-M

[15] Future transfers of technology would be governed by the proposed Final Judgment as well, which would restrict such transfers to surplus production assets.

Drug Enforcement Administration

[Docket No. 89-67]

Sol T. DeLee, M.D., Las Vegas, NV; Hearing

Notice is hereby given that on November 9, 1989, the Drug Enforcement Administration, Department of Justice, issued to Sol. T. DeLee, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on July 11, 1990, commencing at 9:30 a.m., at the United States Tax Court, Federal Building & U.S. Post Office, 301 East Stewart Street, Room 213, Las Vegas, Nevada.

Dated: June 29, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90-15961 Filed 7-9-90; 8:45 am]

BILLING CODE 4410-09-M

Consent Decree in Clean Air Act Enforcement Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Conoco Pipeline Company*, Civil Action No. CIV-89-349-R was lodged with the United States District Court for the Western District of Oklahoma on June 27, 1990. On February 28, 1989, the United States filed a Complaint against Conoco Pipeline Company (Conoco), alleging violations of the Clean Air Act New Source Performance Standards (NSPS) at Conoco's Del City, Oklahoma facility. This proposed Consent Decree resolves Conoco's liability for the violations alleged in the Complaint and requires Conoco to pay a civil penalty of 69,995.00. Injunctive relief is not required because Conoco has already achieved compliance with the NSPS requirements that were the subject of the Complaint.

The Department of Justice will accept written comments relating to this Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to

United States v. *Conoco Pipeline Company*, 90-5-2-1-1319.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Oklahoma, 4434 NW. 4th Street, Oklahoma City, OK 73102, at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733, and at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-15936 Filed 7-9-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

NEW

Employment and Training Administration

Advance Notice of Intent

ETA 9030 and 9031

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 9030	State or local Govts	140	Biennially	30 minutes.
ETA 9031	do	10	One-time	15 minutes.
Total				73 hours.

The forms are to provide JTPA 401 applicants, prior to submission of a final Notice of Intent, with information relative to potential comeptition.

REVISION

Bureau of Labor Statistics

Occupational Safety, Occupational Health/Safety Programs

1220-0045; OSHA No. 200-S

Form No.	Affected public	Number of respondents	Frequency	Average time per response
OSHA No. 200-S	State and local governments (as per State law), Farms, Businesses or other for-profit, Non-profit institutions. Small businesses or organizations.	280,000	Annually	15 minutes.
Total				70,000 hours.

The Occupational Safety and Health Act and 29 Code of Federal Regulations Part 1904 prescribes that certain employers maintain, and report when requested, records of job-related injuries and illnesses. These data are needed by the Bureau of Labor Statistics and the Occupational Safety and Health Administration, to report on the number of cases occurring and to carry out enforcement of standards to guarantee workers' safety and health on the job.

Signed at Washington, DC this 5th day of July, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-15960 Filed 7-9-90; 8:45 am]

BILLING CODE 4510-33-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-48]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by August 8, 1990. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0017), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 755-1430.

Reports

Title: Report of Government-Owned/ Contractor-Held Property.
OMB Number: 2700-0017.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Busineses or other for-profit, small businesses or organizations.
Number of Respondents: 2,750.
Responses per Respondent: 1.
Annual Responses: 2,750.
Hours per Response: 4.
Annual Burden Hours: 11,000.
Abstract-Need/Uses: NASA is required to account for Government-owned/ contractor-held property. The NASA Form 1018 submitted by contractors provides the data to reconcile NASA's property accounts, from which internal management and external information reports are derived.

Dated: June 29, 1990.

D.A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 90-15860 Filed 7-9-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 24, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Defense Logistics Agency (N1-361-90-2). Internal review working papers and case files.

2. Defense Logistics Agency (N1-361-90-3). Routine and facilitative public information files.

3. Office of the Secretary of Defense (N1-330-90-1). Routine records relating to exercises.

4. Department of Agriculture, Agricultural Research Service (N1-310-90-1). Records of the Administrator's central correspondence file relating to housekeeping activities such as procurement, travel, property management, etc.

5. Department of Commerce, Office of Budget, Planning, and Organization (N1-40-90-3). Internal Control Reviews and Correspondence, GAO audits, Inspector General Audits, and Audit Program Correspondence.

6. Department of Commerce, International Trade Administration (N1-151-90-2). Copies of Customs entry records covering integrated circuits.

7. Federal Energy Regulatory Commission (N1-138-90-2). Area Rate Investigations Electronic Data.

8. Department of Health and Human Services, Family Support Administration (N1-292-90-1). Records relating to assistance rendered to states in automating Federally-mandated child support enforcement and family support programs.

9. United States Information Agency, Bureau of Educational and Cultural Affairs, Office of International Visitors (N1-306-89-13). Routine and facilitative records. Policy records are scheduled for permanent retention.

10. Department of Justice, Immigration and Naturalization Service (N1-85-90-4). Form I-102, Application by Nonimmigrant Alien for Replacement of Arrival Document.

Dated: July 2, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-15891 Filed 7-9-90; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meetings

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: August 16, 1990, 8 a.m.-6 p.m.; August 17, 1990, 9 a.m.-5:30 p.m.

PLACE:

August 16, 1990

New York State, Rikers Island Correctional Facility, Fishkill Correctional Facility

August 17, 1990

5 Penn Plaza, 3rd Floor Large Conference Room, New York, New York

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street NW., Suite 815, Washington, DC 20006 (202) 254-5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: On August 16, 1990, the Commission will make site visits to the Rikers Island and Fishkill Correctional Facilities in New York.

On August 17, 1990, the Commission will hear testimony on issues relating to HIV infection and correctional facilities.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-15910 Filed 7-9-90; 8:45 am]

BILLING CODE 6820-CN-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-4 and NPF-7 issued to Virginia Electric and Power Company (the licensee) for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) located in Louisa County, Virginia. The proposed amendments would permit a suspension of cycling the turbine governor values during end-or-cycle power coastdown between 835 MWe (87% full power) and 386 MWe (40% full power) based on the results of the Westinghouse Risk Management Report, "Probabilistic Evaluation of Effects of Not Testing Turbine Governor Valves During Coastdown" (August 1989) for NA-1&2.

The present NA-1&2 Technical Specification (TS) 4.7.1.7.2 requires that a turbine governor valve freedom test be performed every 31 days in order to demonstrate operability of the overspeed protection system. The probabilistic risk assessment concluded that a test suspension of up to 75 days (corresponding to a typical coastdown period from 100% to 40% reactor power) would be acceptable, after which the demonstration of turbine governor valve freedom would be required by reducing power from 40% to 20% to perform the test in accordance with Westinghouse's turbine operation recommendation. Westinghouse has recommended that the governor valves not be cycled within the intermediate power range (87%—40%) to preclude subjecting the first stage (control stage) blading of the high pressure turbine to loadings which exceed design conditions. During governor valve freedom testing at intermediate power, govenor valve operation is such that steam is passed through diagonally opposed nozzle chambers to the high pressure turbine. As a result of the thus-created intermittent steam flow condition, the rotating control stage blading is "shocked" twice per revolution with changing forces as it enters and then leaves the steam flow path. This doubleshock blade loading condition may overstress the turbine control stage blading because the blading is designed for a resonant loading frequency of once per revolution. Thus, the Westinghouse recommendation is not to test the governor valves while the turbine is operating in the intermediate power range.

The other alternative of reducing turbine power to a level below the restricted range may induce a transient based on the effects of xenon at this point in core life which could affect core stability. A decision to perform the test at the lower power level would also result in an extended reduction in power in order to minimize the effects of any transient on the core and to ensure that secondary plant performance is controlled and monitored closely. Not only would the power reduction result in lost generation, but it would also subject the plant to increased risk of an unnecessary transient such as a reactor trip.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The licensee provided an analysis that addressed the above three standards in the amendment application as follows:

Virginia Electric and Power Company has reviewed this proposed change and determined that the proposed change does

not involve a significant hazards consideration as defined in 10 CFR 50.92. The basis for this determination is that this change:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change has no adverse impact upon probability or consequences of any accident previously evaluated. Only surveillance requirements (i.e., frequency) for cycling the turbine governor valves are changed and only during the final few months of the operating cycle. No new or unique accident precursors are introduced by this change in surveillance requirements.

The heavy hub design of the turbine rotors and proceduralized manual backup to the automatic initiation of the turbine trip provide further assurance that the probability of the generation of destructive missiles remains minimal. Based upon the results of the probabilistic risk assessment, the probability of a turbine generated missile is less than 10^{-5} per year which the Commission has endorsed as the acceptable level for turbine operation for unfavorably oriented turbines (Letter from C. E. Rossi (USNRC) to J. A. Martin (Westinghouse), February 2, 1987).

Turbine governor valve testing performed to date has demonstrated the reliability of these valves. The operability of the turbine governor valves will be demonstrated on an ongoing basis as turbine load is periodically adjusted downward to match reactor power during the power coastdown. This can be confirmed by monitoring the changes in governor valve position as turbine power is adjusted. In addition, the operability of the other turbine valves (i.e., turbine throttle valves, turbine stop valves, turbine intercept stop valves) will continue to be verified every 31 days throughout the coastdown period.

The demonstrated high reliability of the governor valves and the monitoring of the governor valve position changes during the coastdown and the verification of the operability of the other turbine valves provide adequate assurance that the turbine overspeed protection system will operate as designed, if needed, until the end-of-cycle shutdown for refueling. Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the implementation of the proposed change to the surveillance requirements will require no hardware modifications (i.e., alterations to plant configuration), operation of the facilities with these proposed Technical Specifications does not create the possibility for any new or different kind of accident which has not already been evaluated in the Updated Final Safety Analysis Report (UFSAR). In addition, the results of the probabilistic risk assessment indicated that no additional transients have been introduced.

The proposed revision to the Technical Specifications will not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety-related system performs its function. The design and operation of the turbine overspeed protection and turbine control system are not being changed. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

The design and operation of the turbine overspeed protection and the turbine control systems are not being changed and the operability of the turbine governor valves will be demonstrated on an ongoing basis as turbine load is periodically adjusted. In addition, the results of the accident analyses which are documented in the UFSAR continue to bound operation under the proposed changes, so that there is not safety margin reduction. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff reviewed the licensee's no significant hazards consideration determination and agrees with the analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 9, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at The Alderman Library, Manuscripts Department, University of Virginia, Charlottesvile, Virginia 22901. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow (petitioner's name, telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq, Hunton and Wiliams, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 28, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland, this 2nd day of July 1990.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate, Division of Reactor Projects—Office of Nuclear Reactor Regulation.

[FR Doc. 90-15978 Filed 7-9-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28173; File No. SR-DGOC-90-05]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Delta Government Options Corporation Relating to the Definition of Expiration Date

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 29, 1990, Delta Government Options Corporation ("Delta") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below. On June 19, 1990, Delta amended the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The primary purpose of Delta's proposed rule change is to conform its definition of "expiration date" to that of the Chicago Board of Trade ("CBOT"). Under Delta's current rules, the expiration date for short-dated options is the first Friday of a calendar month following the date of issuance of such options.[2] Delta's proposal would revise this definition to provide that if such Friday is not a business day, then the expiration date for such options would be the preceding business day. Similarly, Delta's current rules provide that the expiration date for all options other than short-dated options ("long-dated options") is the third Friday of the expiration month.[3] Delta's proposal would alter the expiration date for these options to the last Friday during an expiration month where such Friday precedes at least five remaining business days within such calendar month. However, if such last Friday is not a business day, or there is a Friday which is not a business day which precedes by four business days the remaining business days within such calendar month, the expiration date shall be the business day preceding such Friday.

Finally, Delta's proposal revises the definition of "short-dated options" to

[1] *See* letter from David Maloy, President, Delta, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated June 19, 1990, requesting accelerated approval of Delta's proposal.

[2] *See* Delta rule 1001.

[3] *Id.*

provide that such options are issuable commencing the Monday prior to the expiration date of regularly scheduled long-dated options expiring that month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, or the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to respond to participants' requests to provide them with the opportunity to more precisely hedge finanicial exposures created in other trading environments.

The proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder applicable to Delta since the proposed rule change will permit more utilization of Delta's system by those participants who prefer to trade in options for hedging purposes or speculation.

In particular, the tailoring of the options expiration on the basis proposed by Delta will afford participants additional flexibility to adjust option duration in relation to their overall treasury security portfolios. The proposal, moverover, will enable participants to submit, for processing at Delta, over-the-counter treasury options trades that, prior to this proposal, could not be submitted because their stated expiration date was not available through Delta.

Delta's proposal, therefore, will allow for the automated clearance and settlement of securities transactions that otherwise would have been cleared via a decentralized, inefficient and labor-intensive process.

B. Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Delta received three letters of comment on the proposal. In general, the commentators supported Delta's proposal and stated that concurrent expiration dates between Delta and CBOT would lead to more efficient options pricing. The commentators also noted that Delta's and CBOT's expiration dates would not coincide in August 1990, and urge Delta to seek expedited approval of its proposal.[4]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Delta requests that the proposed rule change be given accelerated effectiveness, prior to the thirtieth day after the date of publication of notice of the filing, pursuant to section 19(b)(2) of the Act. In this regard, Delta has informed the Commission that many of its participants utilize hedging strategies involving options on U.S. treasury note and bond futures traded on the CBOT and options on U.S. treasury securities traded through Delta's system. However, because Delta's current definition of "expiration data" is different from that of the CBOT, the expiration date for options on treasury futures traded at the CBOT may differ by as much as one week from the expiration date for options on U.S. treasury securities traded through Delta's system during those months in which there are five Fridays instead of four.[5] These asynchronous expiration dates expose Delta's participants to risk of holding an unhedged options position during certain months of the year. Instead of assuming this risk, these participants may refrain from using Delta's system during such months and may execute transactions in over-the-counter options on U.S. treasury securities outside Delta's system instead.

As the commentators have noted, August, 1990, is a month in which the CBOT's expiration date for options on U.S. treasury note and bond futures differs from the expiration date for options on U.S. treasury securities traded through Delta's system. Consequently, provided the Commission finds that "good cause" exists pursuant to section 19(b)(2) of the Act, the Commission may approve Delta's proposal prior to the thirtieth day after the date of publication of notice of the filing thereof.

[4] *See* letters from Andrew T. Vaden, Vice President, Morgan Stanley & Co., Inc., Perry J. Vieth, Vice President, Fuji Securities Inc., and Johann H.W. Christofferson, Managing Director, The Bank of Boston, to David Maloy, President, Delta, dated June 13, June 17 and June 6, 1990, respectively.

[5] The Commission notes that August, 1990, is the first month since Delta's inception in which this situation occurs.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference room 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to file number SR-DGOC-90-05 and should be submitted by July 20, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 3, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15893 Filed 7-9-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

July 3, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Elan Corporation Plc
American Depository Shares, Without Par Value (File No. 7-6012)

Phoenix Resource Companies, Inc.
Common Stock, $.001 Par Value (File No. 7-6013)

Unifi, Inc.
Common Stock, $.10 Par Value (File No. 7-6014)
Gamma Biologicals, Inc.
Common Stock, $.10 Par Value (File No. 7-6015)
Playboy Enterprises, Inc.
Class A Common Stock, $0.1 Par Value (File No. 7-6016)
Playboy Enterprises, Inc.
Class B Common Stock, $.01 Par Value (File No. 7-6017)
RJR Nabisco Holdings Corp.
Warrants expiring 5/22/99 (File No. 7-6018)
Summa Medical Corportion
Common Stock, $.01 Par Value (File No. 7-6019)
Transatlantic Holding, Inc.
Common Stock, $1 Par Value (File No. 7-6020)
Xytronyx, Inc.
Common Stock, $.02 Par Value (File No. 7-6021)
El Paso Refinery, L.P.
Cumulative Participating Convertible Units, No Par Value (File No. 7-6022)
Foodarama Supermarkets
Common Stock, $.01 Par Value (File No. 7-6023)
Molecular Biosystems, Inc.
Common Stock, $.01 Par Value (File No. 7-6024)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting systems.

Interested persons are invited to submit on or before July 25, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-16022 Filed 7-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17556; File No: 812-7463]

June 29, 1990.

Application for Exemption; Anchor National Life Insurance Co.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT(S): Anchor National Life Insurance Company ("Anchor National"), Variable Annuity Account One ("Separate Account"), and Variable Annuity Account One (C) ("Separate Account (C)") (collectively "Applicants").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 17(b) from Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit the proposed merger of Separate Account (C) into the Separate Account.

FILING DATE: The application was filed on January 24, 1990 and amended on May 4, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on July 24, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Anchor National Life Insurance Company, 11601 Wilshire Boulevard, Los Angeles, California 90025.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, (202) 272-2058, or Heidi Stam, Special Counsel, (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3281 (in Maryland (301) 253-4300).

APPLICANTS' REPRESENTATIONS: 1. Anchor National is a stock life insurance company organized under the laws of the State of California. For the purposes of the 1940 Act, Anchor National is the depositor of the Separate Account and Separate Account (C).

2. On November 13, 1989, Anchor National entered into an Agreement ("Reinsurance Agreement") with Broad Inc., Integrated Resources, Inc. ("IRI") and Integrated Resources Life Insurance Company ("IR Life"), which amended a stock purchase agreement dated November 1, 1989 between Broad Inc. and IRI. Under the Reinsurance Agreement, Anchor National acquired on an assumption reinsurance basis the variable annuity contracts of IR Life, including certain contracts (the "IR Life Contracts") that are funded in the Separate Account. Anchor National assumed all the liabilities and obligations under the reinsured IR Life Contracts. Reinsured contract owners have the same contract rights and the same contract values as they did before the reinsurance transaction. However, reinsured contract owners now look to Anchor National instead of IR Life to fulfill the terms of their contracts.

3. The Separate Account was originally established by IR Life pursuant to Iowa insurance law on January 21, 1985. In fulfillment of the Reinsurance Agreement, to the Separate Account with all of its assets was transferred to Anchor National on January 18, 1990 and reestablished under California insurance law. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act.

4. On December 19, 1989 a registration statement was filed to register certain variable annuity contracts ("Contracts") to be funded in the Separate Account. The Contracts are identical in all material respects to the IR Life Contracts except for the change in depositor from IR Life to Anchor National. That registration statement was filed pursuant to a staff "no-action" letter (Reference No. IP-8-89), that Anchor National had requested in connection with the Reinsurance Agreement, and in connection with which Anchor National undertook not to sell any new contracts funded in the Separate Account until such a registration statement, describing the new depositor, was declared effective. The registration statement was declared effective on February 1, 1990.

5. Separate Account (C) was established by the Capitol Life Insurance Company ("Capitol Life"), a stock life insurance company organized under the laws of Colorado, pursuant to Colorado insurance law on September 23, 1986.

6. Capitol Life and IR Life are both indirect wholly-owned subsidiaries of IRI. In 1987, Capitol Life began offering certain contracts, the Capitol Contracts, which were cloned from the IR Life Contract. The purpose of offering the Capitol Contracts was to permit IRI

(through Capitol Life) to market a clone of the IR Life Contract in the State of California. The Capitol Contracts are funded through Separate Account (C). Separate Contract (C) is registered with the Commission as a unit investment trust under the 1940 Act.

7. In connection with the Reinsurance Agreement, the Capitol contracts were reinsured to IR Life and Separate Account (C) was transferred to IR Life intact on December 31, 1989. IR Life, in turn, reinsured the Capitol Contracts to Anchor National. Separate Account (C) was assumed intact by Anchor National on January 18, 1990 and reestablished under California insurance law. Anchor National does not intend to offer any new contracts in connection with Separate Account (C). Anchor National will, however, accept payments made by contract owners of reinsured Capitol Contracts. As in the case of the reinsured IR Life Contracts, contract owners of the reinsured Capitol Contracts have the same contract values as they did before the reinsurance transaction. However, they will look to Anchor National instead of Capitol Life to fulfill the terms of their contracts.

8. The Contracts and the reinsured IR Life Contracts (hereinafter the "Separate Account Contracts") are identical in all material respects with the reinsured Capitol Contracts. Unit values of all three contracts (the Separate Account Contracts and the reinsured Capitol Contracts) are identical.

9. The management and Board of Directors of Anchor National have determined that the efficiency of the operations of Anchor National could be improved by merging Separate Account (C) with and into the Separate Account. Accordingly, Anchor National's Board has approved a merger under which Separate Account (C) will, subject to necessary regulatory approval (including approval of the California insurance commissioner), be merged with and into the Separate Account (the "Proposed Merger"). The Proposed Merger would be effected at the relative net asset values of the securities to be exchanged.

10. A post-effective amendment under the Securities Act of 1933 for the reinsured Capitol Contracts and an amendment to the 1940 Act registration statement of the Separate Account will be filed reflecting the merger transaction. A copy of the revised prospectus, together with a letter explaining the merger transaction and its implications, and an endorsement reflecting the fact that the reinsured Capitol Contracts would thereafter be funded in the Separate Account, will be sent to each owner of a reinsured Capitol Contract upon consummation of the Proposed Merger. Consistent with the provisions of the 1940 Act and applicable state law, the Proposed Merger will not be submitted to contract owners for approval.

11. Because the separate accounts are affiliated persons of each other, the transfer of assets from Separate Account (C) to the Separate Account may involve these entities, acting as principals, in buying and selling securities or other property from or to one another in contravention of section 17(a). Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting transactions from the prohibitions of section 17(a) of the 1940 Act.

12. Although exemption under Rule 17a-8 under the 1940 Act is not available in this case since Rule 17a-8 is limited to mergers of management investment companies, Applicants contend that the Proposed Merger falls within the spirit and intent of the Rule since it would be effected at the relative net asset values of the securities to be exchanged. No charges, costs, fees, or other expenses would be incurred by contract owners of either separate account as a result of, or in connection with, the Proposed Merger nor would there be any imposition of tax liability on contract owners as a result of the Proposed Merger. Thus, the Proposed Merger would not result in dilution of the economic interests of contract owners of either separate account.

13. With respect to Separate Account (C) and its contract owners, the only practical result of the Proposed Merger would be the change in the identity of the separate account funding the reinsured Capitol Contracts.

14. With the exception of two subaccounts of the Separate Account, which will not be affected by the Proposed Merger, each separate account is the mirror image of the other. Both separate accounts were established and registered with the Commission to fund materially identical variable annuity contracts. Both separate accounts invest exclusively in the same underlying investment company. The only significant difference is in the identity of the separate account funding the respective contracts.

15. The proposed merger would avoid the need for duplicative filings with governmental agencies and would otherwise avoid the costs associated with maintaining two separate accounts.

16. The Commission has previously granted exemptive orders pursuant to section 17(b) of the 1940 Act permitting the merger of separate accounts organized as unit investment trusts having the same insurance company depositor. Those orders involve factual situations similar to the factual situation presented in this case and strongly support the Applicants' request for exemptive relief.

17. Applicants submit that the Proposed Merger is consistent with the policies of the separate accounts and the general purposes of the 1940 Act. Applicants further submit that the terms of the Proposed Merger are reasonable and fair to the Separate Account and Separate Account (C) contract owners and do not involve overreaching on the part of any person concerned. For these reasons, it is submitted that the statutory standards of section 17(b) of the 1940 Act have been met.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16023 Filed 7-9-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9343]

Issuer Delisting; Notice of Application To Withdraw From Listing; The Chariot Group, Inc. Common Stock, $.10 Par Value

July 3, 1990.

The Chariot Group, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated there under to withdraw the above specified security from listing and registration on the American Stock Exchange ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the listing of its common stock on the AMEX, the limited trading activity, the lack of public interest in the business of the Company are now conducted, the limited number of registered holders, the relatively small value of the market capitalization and control of the Company by a single stockholder, who owns more than 80% of the issued and outstanding shares.

Any interested person may, on or before July 25, 1990, submit by letter to

the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-16024 Filed 7-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17561; 812-7504]

CS First Boston, Inc.; Notice of Application

July 3, 1990

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order of Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: CS First Boston, Inc.

RELEVANT 1940 ACT SECTION: Exemption requested pursuant to section 9(c) from the provisions of section 9(a) of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order permanently exempting CS First Boston and all persons now or hereafter directly or indirectly controlled by CS First Boston from the provisions of section 9(a) of the Act.

FILING DATE: The application was filed on March 30, 1990 and amended on April 5, April 26, May 9, and May 14, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 30, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicant, Secretary, CS First Boston, Inc., Park Avenue Plaza, New York, New York 10055.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, at (202) 272-2511 or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The various companies in the CS First Boston Group provide a wide range of international investment banking and investment advisory services to clients throughout the world. CS First Boston, Inc. ("CS First Boston" or "Applicant"), a Delaware corporation, is a privately held holding company. CS Holding, a Swiss corporation, indirectly holds 44.5% of CS First Boston's outstanding voting common stock and 44.5% of CS First Boston's outstanding non-voting stock. CS Holding also owns 99.8% of Credit Suisse, a Swiss banking institution.

2. Credit Suisse First Boston Asset Management Limited ("Fund Managers"), wholly-owned subsidiary of CS First Boston, is an English company registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). In the near future, CS First Boston expects (a) Metropolitan Life Insurance Company to acquire 45% of the outstanding voting stock of Fund Managers, (b) a subsidiary of CS Holding, a company that indirectly holds 44.5% of CS First Boston, to acquire 5% of the outstanding voting stock of Fund Managers, and (c) management employees of Fund Managers to acquire 0.5% of such voting stock. After these transactions, CS First Boston will indirectly hold 49.5% of the voting stock of Fund Managers.[1]

3. If the requested relief is granted, Fund Managers intends to act as the investment adviser to The East-West Europe Fund, Inc., a Maryland corporation (the "Fund"). On March 25, 1990, the Fund filed with the Commission a notification of registration on Form N-8A under the Act as a closed-end, non-diversified management investment company and a Registration Statement on Form N-2 under the Act and the Securities Act of 1933. Fund Managers may also advise additional registered investment companies in the future.

4. The First Boston Corporation ("FBC"), a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act") and an investment adviser registered under the Advisers Act, is a wholly owned subsidiary of CS First Boston.

5. On November 25, 1975, the SEC commenced an action entitled *Securities and Exchange Commission* v. *American Institute Counselors, Inc., et al.*, 75 Civ. 1965 (D.D.C. November 25, 1975), against several defendants, including Credit Suisse, alleging violations of various provisions of the federal securities laws. Credit Suisse, without admitting or denying any of the allegations of the Complaint, consented to the entry of an injunction (the "Credit Suisse Order") terminating the action against it. The Credit Suisse Order provides, among other things, that Credit Suisse shall not be involved in the sale of various gold-backed securities and gold-related items offered for sale by American Institute Counselors and certain of its affiliates except in accordance with the provisions of section 5 of the Securities Act of 1933.

6. In December 1982, FBC received a permanent order pursuant to section 9(c) exempting it from the Section 9(a) prohibition resulting from the 1975 Credit Suisse Order. Investment Company Act Release Nos. 12867 (December 3, 1982) (notice and temporary order) and 12928 (December 27, 1982) (permanent order).

7. On May 5, 1986, the SEC filed a complaint against FBC in a civil action entitled *Securities and Exchange Commission* v. *The First Boston Corporation*, 86 Civ 3524 (S.D.N.Y. May 5, 1986). The Complaint alleged that, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, FBC purchased for its own account securities of the CIGNA Corporation ("CIGNA") while in possession of material non-public information that BFC's Corporate Finance Department received from CIGNA's management in connection with investment banking advice CIGNA had sought from FBC. On the same day, FBC consented to the entry of a permanent injunction enjoining FBC from engaging in transactions, acts,

[1] Counsel for Applicant has informed the staff of the Division of Investment Management that subsequent to the filing of this application these proposed transactions have been consummated, and that Credit Suisse First Boston Asset Management Limited has changed its name to CS First Boston Global Fund Managers Limited.

practices or courses of business which constitute or would constitute violations of section 10(b) of the Exchange Act and Rule 10b–5 thereunder (the "FBC Judgment").

8. In July 1986, the SEC permanently exempted FBC from the prohibitions of section 9(a) of the Act with respect to the FBC Judgment. Investment Company Act Release Nos. 15086 (May 5, 1986) (notice and temporary order) and 15221 (July 24, 1986) (permanent order).

Applicant's Legal Analysis

9. Section 9(a)(2) of the Act provides that it is unlawful for any person to serve or act in the capacity of investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, if such person, by reason of any misconduct, is permanently or temporarily enjoined from engaging in any conduct or practice in connection with the purchase or sale of any security. A company, "any affiliated person of which is ineligible" to serve in any of these capacities by reason of section 9(a)(2) is similarly ineligible by reason of section 9(a)(3).

10. For purposes of this application, Applicant states that it, and any persons now or in the future controlled by it, are affiliated persons of both Credit Suisse and FBC within the meaning of the Act. Section 9(a)(3) therefore subjects Applicant and all persons directly or indirectly controlled by Applicant to the prohibitions of section 9(a) as a result of the Credit Suisse Order and the FBC Judgment.

11. Section 9(c) of the Act provides that, upon application, the SEC by order shall grant an exemption from the provisions of section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the Applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

12. Applicant submits that the prohibitions of section 9(a) of the Act, to the extent applicable by virtue of the entry of the Credit Suisse Order and the FBC Judgment, as applied to it and any person now or hereafter directly or indirectly controlled by it, would be unduly or disproportionately severe and that the conduct of Credit Suisse and FBC has been such as not to make it against the public interest or protection of investors to grant the relief requested in this application. Applicant submits that these standards have been met for the reasons stated below.

13. More than 14 years have passed since the entry of the Credit Suisse Order. Credit Suisse has been subject to no proceeding or orders alleging violations of the federal securities laws in that time. In addition, at the time of the alleged violations of the federal securities laws by Credit Suisse which resulted in such order, Credit Suisse was not an "affiliated person" of CS First Boston. Neither CS First Boston nor any person directly or indirectly controlled by CS First Boston was a party to, or participated in, any violations resulting in the Credit Suisse Order.

14. On two previous occasions, the SEC has issued orders granting similar relief with respect to the Credit Suisse Order. In July 1976, the SEC issued two orders permanently exempting certain affiliates of Credit Suisse from the provisions of section 9(a) with respect to the Credit Suisse Order. White, Weld & Co., Inc., Investment Company Act Release Nos. 9337A (July 12, 1976) (notice and temporary order) and 9375 (July 29, 1976) (permanent order); SoGen-Swiss International Corporation, Investment Company Act Release Nos. 9338A (July 12, 1976) (notice and temporary order) and 9376 (July 29, 1976) (permanent order). In December 1982, the SEC issued an order permanently exempting FBC from the prohibitions of section 9(a) resulting from the Credit Suisse Order.

15. With respect to the FBC Judgment, only FBC participated in the conduct alleged to have constituted a violation of the federal securities laws that resulted in the FBC Judgment. The alleged conduct which resulted in the FBC Judgment did not in any way involve the Applicant, or FBC acting as investment adviser or distributor for any registered investment company. In 1986, the SEC granted FBC an order, pursuant to section 9(c), exempting it from the provisions of section 9(a) that might otherwise be operative as a result of the FBC Judgment.

16. The Applicant represents that the ability of persons directly or indirectly controlled by it to act as principal underwriter or investment adviser in compliance with the requirements of the Act is not in any way impaired, or even apparently impaired, by the existence of the Credit Suisse Order or the FBC Judgment.

Order Requested by the Applicant

17. Based on the foregoing, Applicant requests that the SEC issue an order pursuant to Section 9(c) permanently exempting CS First Boston and all persons now or hereafter directly or indirectly controlled by CS First Boston from the provisions of Section 9(a) of the Act with respect to the entry of the Credit Suisse Order and the FBC Judgement.

Applicant's Conditions

If the requested exemptive relief is granted, the Applicant agrees to the conditions set forth below:

1. Neither CS First Boston, nor any person directly or indirectly controlled by CS First Boston, relying upon relief granted pursuant to this application, will employ any of the equity traders, analysts or the investment banker referred to in the Complaint filed on May 5, 1986, *Securities and Exchange Commission* v. *The First Boston Corporation*, 86 Civ. 3524 (S.D.N.Y. May 5, 1986), in any capacity related directly to the provision of investment advisory services for registered investment companies or to acting as a principal underwriter for a registered open-end investment company or to acting as a principal underwriter or depositor for a unit investment trust without first making further application to the SEC pursuant to section 9(c).

2. Neither CS First Boston, nor any person directly or indirectly controlled by CS First Boston relying upon relief granted pursuant to this application, will employ any of the individuals referred to in the Complaint filed on November 25, 1975, *Securities and Exchange Commission* v. *American Institute Counselors, Inc.*, 75 Civ. 1965 (D.D.C. November 25, 1975), in any capacity related directly to the provision of investment advisory services for registered investment companies or to acting as a principal underwriter for a registered open-end investment company or as a principal underwriter or depositor for a unit investment trust without first making further application to the SEC pursuant to section 9(c).

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–16025 Filed 7–9–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17554, International Series Release No. 130; File No. 812–7548]

Mackenzie Financial Corporation, et al.; Notice of Application

June 28, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Temporary Order of Exemption and Notice of Application for Permanent Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Mackenzie Financial Corporation and Mackenzie Investment Management Inc. (the "Applicants").

RELEVANT 1940 ACT SECTIONS: Sections 9(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek a temporary and a permanent order

under section 9(c) of the 1940 Act exempting them from the provisions of section 9(a).

FILING DATE: The application was filed on June 28, 1990.

HEARING OR NOTIFICATION OF HEARING: A permanent order granting the application will be issued unless the SEC orders a hearing or extends the temporary exemption. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 27, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC. 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Alan Rosenblat, Esq., and Keith W. Vandivort, Esq., Dechert Price & Rhoads, 1500 K Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, (202) 272-3022, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282, (in Maryland (301) 258-4300).

Applicants' Representations

1. Mackenzie Financial Corporation ("MFC") and Mackenzie Investment Management Inc. ("MIMI") are registered investment advisers under the Investment Advisers Act of 1940. MIMI is a wholly-owned subsidiary of MFC. Applicants act in various capacities as manager, distributor and investment adviser for two United States registered investment companies consisting of ten series or portfolios and for eighteen foreign investment companies whose securities are not offered or sold in the United States. As of April 30, 1990, assets of the domestic registered investment companies aggregated $265 million and more than Can$5.9 billion for the foreign funds.

2. On June 28, 1990, the Supreme Court of Ontario, Canada, issued an Order of Prohibition (the "Canadian Order") against MFC prohibiting it and its successors and assigns from "discouraging or attempting to discourage" any Canadian dealer selling investment company shares from "providing a rebate of part or all of its commission or a discount from its commission * * * to persons who purchase securities of any mutual fund of which (MFC) is the trustee or manager." The Canadian Order also prohibits MFC "from refusing to supply securities of a mutual fund of which it is the manager to, or from otherwise discriminating * * * against any (Canadian) dealer because of the dealer's rebate, discount or advertising practices with respect to commissions for the sale of such securities." The Canadian Order, based on an agreed statement of facts, was issued by consent of MFC.

3. The conduct which resulted in the Canadian Order allegedly violated certain provisions of the Canadian Competition Act [1] and occurred in connection with MFC's alleged refusal in 1985 to do business with Gardiner Group Stockbrokers, Inc., a Canadian broker ("Gardiner"), based on Gardiner's rebate and discount practices. MFC, as a matter of policy, did not engage in business with brokers that advertised the sale of investment company securities at a discount because such brokers, unlike full service brokers, might not provide financial planning services to their customers. However, MFC was unaware that this policy could allegedly violate Canadian law. In consenting to the Canadian Order, MFC did not admit to any such violation.

Applicants' Legal Analysis

4. Section 9(a)(2) of the 1940 Act makes it unlawful for any person to serve or at as an investment adviser or depositor of any registered investment company, or as a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company, if such person, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Section 9(a)(3) of the 1940 Act makes it unlawful for a company any affiliated person of which is ineligible by reason of section 9(a)(2), to serve in the foreoing capacities. MIMI is an affiliated person of MFC because it is MFC's subsidiary.

[1] Can. Rev. Stat. c. C-34, s. 61(1)(b) (1985).

5. Section 9(c) provides that the SEC shall by order grant an application for exemption from section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of that section, as applied to the applicant, are unduly or disproportionately severe, or that the conduct of such person has been such as not to make it agaisnt the public interest or protection of investors to grant such application.

6. Applicants submit that the prohibitions of section 9(a) of the 1940 Act, to the extent that they are operative as a result of entry of the Canadian Order, would be unduly and disproportionately severe as applied to Applicants and that the conduct of Applicants has been such as a not to make it against the public interest or protection of investors to grant the requested exemption.

7. Applicants state that the SEC should grant the permanent order because:

(a) The conduct which led to the issuance of the Canadian Order, while allegedly in violation of Canadian law, would not be illegal if carried out in the United States. Indeed, section 22(d) of the 1940 Act and Rule 22d-1 thereunder require that openend investment company shares be sold at the current offering price described in the prospectus and prohibit individually negotiated discounts or rebates from the stated sales charge. Absent an exemption from section 22(d), the conduct would have been required if carried out by a registered investment company in the United States or Canada. Thus, the alleged conduct was of such nature that it would not be against the public interest or the protection of investors for the SEC to grant the requested exemption.

(b) Applicants contend that is some doubt about whether the Canadian Order would result in an automatic bar under section 9(a) of the 1940 Act, because the order was issued by a foreign jurisdiction and pertains to conduct occurring outside the United States.[2] Nonetheless, Applicants seek a permanent exemptive order to obviate any uncertainly as to Applicant's status.

(c) Even assuming that the SEC regards the alleged conduct that led to

[2] For example, Applicants argue that pending legislative proposals would amend Section 9 of the 1940 Act by authorizing the Commission to initiate administrative proceedings against persons enjoined by foreign courts to prohibit them from serving in the capacities set forth in Section 19(a). *See* International Securities Enforcement Cooperation Act of 1989, H.R. 1396, 101st Cong., 1st Sess. (1989).

the Canadian Order as improper, there is virtually no likelihood that such conduct will be repeated. Applicants intend to comply fully with the Canadian Order and have changed their current prospectuses for the foreign funds to state that any Canadian broker or dealer "with authority to trade in mutual fund securities is entitled * * * to submit orders for the purchase of such" funds.

(d) The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Applicants, because such prohibitions, in substance, would deprive the United States investment companies and their shareholders of Applicants' investment advisory and distribution services. Such deprivation could significantly harm the financial interests of such funds and their shareholders, none of whom were involved in, or implicated by, the alleged conduct that gave rise to the Canadian Order.

(e) The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to future affiliates of Applicants, because such prohibitions would have the effect of penalizing Applicants and such affiliates for conduct unconnected with the business or other activities of such affiliates.

(f) None of the Applicants has previously been the subject of a sanction that resulted in an automatic bar under Section 9(a) or has ever previously applied for an exemption pursuant to Section 9(c) from the provisions of section 9(a) of the 1940 Act.

8. Applicants acknowledge, understand and agree that the application and any temporary exemption issued by the SEC to Applicants shall be without prejudice to the SEC's consideration of their application for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the 1940 Act, or the revocation or removal of any temporary exemption granted in connection with the application.

Temporary Order

The Division has considered the matter and finds that, under the standards set forth in 17 CFR 200.30-5(a)(8) authorizing the Division Director to issue temporary orders pursuant to section 9(c) exempting applicants from section 9(a) for a period not exceeding 60 days, it appears that: (i) The prohibitions of section 9(a), as applied to the Applicants, are unduly or disproportionately severe, (ii) the Applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption, and (iii) granting the temporary exemption would protect the interests of the investment companies being served by the Applicants by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, *It is ordered,* under section 9(c) of the 1940 Act, that the Applicants, their affiliates, future affiliates, and successors and assigns are hereby temporarily exempted from the provisions of section 9(a) of the 1940 Act to the extent such provisions would become operative as a result of the entry of the Canadian Order, until August 27, 1990, unless the Commission takes final action on the application at an earlier date.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-15923 Filed 7-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 35-25111]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 29, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 23, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc., et al. (70-7755)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and Columbia's transmission subsidiary companies, Commonwealth Gas Pipeline Corporation ("CGP"), 800 Moorefield Park Drive, Richmond, Virginia 23235, and Columbia Gas Transmission Corporation ("TCO"), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, and 12(f) and Rules 43 and 44 thereunder.

CGP is an intrastate gas transmission company operating in Virginia. CGP provides natural gas transportation service and storage facilities to three end-users and Commonwealth Gas Services, Inc., an affiliated distribution company. TCO is a natural gas company engaged in the production, purchase, storage, transportation and sale of natural gas for resale to various affiliated and non-affiliated companies and municipalities.

Columbia proposes that CGP and TCO be merged, with TCO as the surviving company, succeeding to all properties and liabilities of both companies. Under the Merger Agreement, all outstanding shares of CGP common stock, $10 par value, will be issued to Columbia in exchange for all shares of TCO common stock, $25 par value, held by Columbia based on the ratio of par values. Therefore, one share of TCO common stock will be issued for each two and one half (2.5) shares of CGP common stock held by Columbia.

TCO and CGP also are requesting Commission approval for TCO to assume CGP's unused capital financing amounts at the date of the proposed merger, October 31, 1990. By order dated December 18, 1989 (HCAR No. 25001), the Commission approved CGP's 1990 and 1991 Capital Programs, estimated to be $68 million, by the issuance of CGP's common stock, at par, and Installment Promissory Notes, at principal amount, to Columbia of up to $25 million and $27 million, respectively. Approval also was granted for advances to be made by Columbia to CGP of up to $10 million and for participation in the Columbia system money pool ("Money Pool"). TCO requests permission to issue securities equal in amount to the unissued securities authorized for issuance by CGP. These securities

would be in the form of First Mortgage bonds-Series F Bonds rather than Installment Promissory Notes, and Series A Bonds rather than open account advances or Money Pool borrowings. Finally, TCO would assume any Money Pool deposits of CGP at the date of the merger.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-16026 Filed 7-9-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Interest Rate

Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503-4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 90-15913 Filed 7-9-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 46928; Agreement CAB 1175 as amended]

Application of International Air Transportation Association for Approval of Revised Traffic Conference Provisions; Order

Issued by the Department of Transportation on the 5th day of July, 1990.

On May 17, 1990, the International Air Transport Association (IATA) filed with the Department of Transportation, an application for continued approval of and related antitrust immunity for the provisions for the conduct of the IATA Traffic Conferences. Comments in support of or in opposition to approval of the Agreement are now due July 5, 1990.

The Department, on its own motion, has decided to extend the period for comments by an additional 30 days, or until August 6, 1990, in order to give all interested parties additional time to develop their positions.

Accordingly, the date for filing comments in Docket 46928 is extended to August 6, 1990.

A copy of this order will be published in the **Federal Register.**

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 90-16130 Filed 6-16-90; 11:40 am]

BILLING CODE 4910-62-M

Fitness Determination of L'Express, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 90-7-4, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that, subject to conditions, L'Express, Inc., is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Mrs. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: July 5, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-15991 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-26-M

Reports, Forms, and Recordkeeping Requirements, Submittals to OMB on July 3, 1990

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on July 3, 1990, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Susan Pickrel, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMC) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on July 3, 1990.

DOT No: 3337.

OMB No: New.

Adminstration: Federal Highway Administration.

Title: "Disposal of Waste From Highway Materials Testing Laboratories".

Need for Information: To survey the current disposal problem in detail along with the methods States currently are using for hazardous waste disposal.

Proposed Use of Information: To develop guidelines for use by States as to how to dispose of hazardous wastes

generated by State highway materials testing laboratories.

Frequency: One-time.

Burden Estimate: 354 hours.

Respondents: State highway agencies.

Form(s): None.

Average Burden Hours per Respondent: 6 hours.

DOT No: 3357.

OMB No: 2130–0516.

Administration: Federal Railroad Administration.

Title: Remotely Controlled Railroad Switch Operations.

Need for Information: To protect the lives and safety of railroad workmen or occupants of camp cars and to assure compliance with the Rail Safety Improvement Act.

Proposed Use of Information: To ensure that remotely controlled switches are lined so as to protect lives and safety of railroad employees and assure compliance with Rail Safety Improvement Act of 1988.

Frequency: Recordkeeping.

Burden Estimate: 240,608 hours.

Respondents: 400 Railroads.

Form(s): None.

Average Burden Hours Per Respondent: 4 minutes.

DOT No: 3358.

OMB No: 2120–0027.

Administration: Federal Aviation Administration.

Title: Application for Certificate of Waiver or Authorization.

Need for Information: The information is needed to determine if a certificate of waiver to the provisions of Parts 91 or 101 should be issued.

Proposed Use of Information: The information is used to provide for authorization to deviate from the regulations while assuring the safety of persons, property and other aircraft.

Frequency: On occasion.

Total Estimated Burden: 13,646 hours.

Respondents: Individuals and businesses.

Form(s): FAA Form 7711–2.

Average Burden Hours Per Response: 1 hour.

DOT No: 3359.

OMB No: New.

Administration: National Highway Traffic Safety Administration.

Title: Surveys of Sellers, Repairers/ Retreaders and Fleet Purchasers of Passenger Car, Light Truck, and Van Tires.

Need for Information: To assess the awareness, knowledge, and utilization of information from those persons who purchase, sell, or retread passenger car tires.

Proposed Use of Information: The data will be used by NHTSA to determine what changes, if any, should be made in the types of information required to be made available to tire consumers and the manner of format in which the information is made available.

Frequency: One-time only.

Total Estimated Burden: 50 hours.

Respondents: Individuals.

Form(s): None.

Average Burden Hours Per Respondent: 10 minutes.

DOT No: 3360.

OMB No: 2127–0049.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR part 575, Consumer Information Regulations (Excluding UTQGS).

Need for Information: To provide safety information to new motor vehicle purchasers.

Proposed Use of Information: These regulations establish a system by which information on the performance and safety features on new motor vehicles is made public to first purchasers of motor vehicles.

Frequency: On occasion.

Total Estimated Burden: 507 hours.

Respondents: 39.

Form(s): None.

Average Burden Hours Per Respondent: 1 hour and 18 minutes.

DOT No: 3361.

OMB No: 2127–0001.

Administration: National Highway Traffic Safety Administration.

Title: Procedures for Participating in and Receiving Data from the National Driver Register Problem Driver Pointer System.

Need for Information: To service states on problem drivers through improved technology.

Proposed Use of Information: National Driver Registry is to assist State driver licensing officials, by providing information to them regarding the motor vehicle driving records of individuals, in order to prevent the issuance of driver licenses to individuals whose licenses have been withdrawn, especially those convicted of drunk driving.

Frequency: On occasion.

Total Estimated Burden: 1,376 hours.

Respondents: 52 States.

Form(s): None.

Average Burden Hours Per Respondent: 1 minute.

DOT No: 3362.

OMB No: 2130–0517.

Administration: Federal Railroad Administration.

Title: Supplemental Qualifications Statement for Railroad Safety Inspector Applicants.

Need for Information: To determine the specialized skills of applicants for Railroad Safety Inspector positions.

Proposed Use of Information: To evaluate and rank the qualifications of applicants for Railroad Safety Inspector positions.

Frequency: On occasion.

Burden Estimate: 6,000 hours.

Respondents: 2,000 Individuals.

Form(s): FRA–F–120.

Average Burden Hours Per Respondent: 3 hours.

DOT No: 3363.

OMB No: 2130–0008.

Administration: Federal Railroad Administration.

Title: Railroad Power Brake and Drawbars (Air Brake Inspection and Test Certification).

Need for Information: This information is used by the engineer and road crew to verify that the initial air brake test has been performed in a satisfactory manner.

Proposed Use of Information: To ensure that initial terminal air brake test has been performed as required.

Frequency: Recordkeeping.

Burden Estimate: 1,806 hours.

Respondents: 40 Railroads.

Form(s): None.

Average Burden Hours Per Respondent: 45 hours.

DOT No: 3364.

OMB No: 2125–0032.

Administration: Federal Highway Administration.

Title: A Guide to Report Highway Statistics.

Need for Information: For FHWA to monitor and evaluate the effectiveness of the Federal-aid highway program or analyze the effects of changes in the program.

Proposed Use of Information: To serve as a reference to the reporting system that FHWA desires the States to use in reporting State and local highway statistical data.

Frequency: Quadrennially.

Burden Estimate: 32,028 hours.

Respondents: State highway agencies.

Form(s): FHWA–531, 532, 534, 541, 542, 543, 551M, 556, 561, 562, 571, 1502, 536, and 566.

Average Burden Hours Per Respondent: The average estimate response for this information collection varies from 2.5 hours to 151 hours per response with an average of 8.4 hours per response.

DOT No: 3365.

OMB No: 2125–0536.

Administration: Federal Highway Administration.

Title: Motor Carrier Safety Assistance Program.
Need for Information: For FHWA to determine State compliance with specific legislative and administrative requirements for grant funds.
Proposed Use of Information: For FHWA to monitor and evaluate the progress of each State's program for grants and to justify grants.
Frequency: Quarterly.
Burden Estimate: 1,764 hours.
Respondents: State highway agencies.
Form(s): FHWA Form MCSAP-3.
Average Burden Hours Per Respondent: 3.9 hours for reporting and 12 hours for recordkeeping.

DOT No: 3366.
OMB No: 2120-0039.
Administration: Federal Aviation Administration.
Title: Air Taxi Operators and Commercial Operators—part 135.
Need for Information: The information is needed to certify air carrier/commercial operators under FAR part 135.
Proposed Use of Information: The information is used to insure compliance with the requirements in FAR part 135.
Frequency: On occasion.
Burden Estimate: 347,772 hours annually.
Respondents: Air Carriers and Commercial Operators operating under FAR 135.
Form(s): FAA Form 8000-6.
Average Burden Hours Per Respondent: 57 hours (average is askew due to wide variation of reporting burden—12 minutes to 400 hours per response). The recordkeeping averages 26 hours per entry. (This average is askewed, however, because it covers both establishing and maintaining recordkeeping systems with a range from 3 minutes to 70 hours.)

DOT No: 3367
OMB No: 2120-0008.
Administration: Federal Aviation Administration.
Title: Certifications and Operations: Air Carriers and Commercial Operators of Large Aircraft.
Need for Information: The FAA needs the information to determine operators compliance and applicant eligibility under FAR part 121.
Proposed Use of Information: The information is used to determine if the air carrier is operating in accordance with minimum safety standards.
Frequency: On occasion.
Burden Estimate: 3,218,174 hours.
Respondents: Air carriers operating under FAR part 121.
Form(s): FAA Forms 8400-6 and 8070-1.
Average Burden Hours Per Respondent: 77 hours (average is askew due to wide variation of reporting burden .25 hours to 960 hours per response). The individual average recordkeeping is also askew because of the wide range of time—from 5 seconds to 100 hours. A straight numeric average is 13 hours per recordkeeping entry.

DOT No: 3368.
OMB No: 2137-0557.
Administration: Research and Special Programs Administration.
Title: Approvals for Hazardous Materials.
Need for Information: To ascertain that applicants to become designated approval agencies are qualified and to assure that hazardous materials which pose a special danger to life and property in transportation are being packaged, loaded and transported in a safe manner.
Proposed Use of Information: To verify qualifications of applicants to become approval agencies and to ascertain that materials posing special hazards in transportation channels are safe to transport.
Frequency: On occasion.
Burden Estimate: 3967.42 hours.
Respondents: 759.
Form(s): None.
Average Burden Hours Per Respondent: 4.75 hours.

DOT No: 3369.
OMB No: New.
Administration: U.S. Coast Guard.
Title: Commercial Fishing Industry Vessel Regulations.
Need for Information: This information collection requirement is needed to ensure compliance with the Commercial Fishing Industry Vessel Safety Act of 1988. The purpose of the Act is to reduce the unacceptable high level of fatalities and accidents in the commercial fishing industry.
Proposed Use of Information: Coast Guard will use the information to ensure that the requirements for safety equipment and vessel operating procedures are complied with.
Frequency: On occasion.
Burden Estimate: 87,239.
Respondents: Insurers, vessel owners, agents, masters, and individuals in charge of vessels.
Form(s): None.
Average Burden Hours Per Respondent: 1 hour for reporting and 1.33 for recordkeeping.

DOT No: 3370.
OMB No: 2120-0024.
Administration: Federal Aviation Administration.
Title: Dealer's Aircraft Registration Certificate Application, AC Form 8050-5.
Need for Information: The information is needed to enable the Aircraft Registry to determine eligibility of an applicant to receive a Dealer's Certificate and issue the certificate to the correct name and address.
Proposed Use of Information: The information is used to issue Dealer's Certificates to any individual or company engaged in manufacturing, distributing, or selling aircraft who want to fly those aircraft with a dealer's certificate instead of registering them permanently in his name. The information is also used to provide a system of identification of aircraft dealers.
Frequency: On occasion.
Burden Estimate: 685 hours annually.
Respondents: Individuals and companies engaged in manufacturing, distributing, or selling aircraft.
Form(s): AC Form 8050-5.
Average Burden Hours Per Respondent: 30 minutes per response.

DOT No: 3371
OMB No: New.
Administration: Research and Special Programs Administration.
Title: Control of Drug Use in Natural Gas Liquefied Natural Gas and Hazardous Liquid Pipeline Operations.
Need for Information: To obtain information to determine compliance with the anti-drug program.
Proposed Use of Information: To conduct compliance program if anti-drug program.
Frequency: On occasion.
Burden Estimate: 71,000 hours.
Respondents: Pipeline Operators.
Form(s): None.
Average Burden Hours Per Respondent: 1 hour.

Issued in Washington, DC on July 3, 1990.

Robert J. Woods,

Director of Information, Resource Management.

[FR Doc. 90-15990 Filed 7-9-90; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Flight Service Station at Redwood Falls Municipal Airport, Redwood Falls, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

SUMMARY: Notice is hereby given that on June 27, 1990, the Flight Service Station (FSS) at Redwood Falls, Minnesota was closed. Services to the aviation public in the Redwood Falls flight plan area, formerly provided by Redwood Falls

FSS, are being provided by the automated flight service station (AFSS) at Princeton, Minnesota. This information will be reflected in the FAA organization statement the next time it is reissued. (Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Edward J. Phillips,

Regional Administrator, Great Lakes Region.

[FR Doc. 90-16013 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. S-868]

Lykes Bros. Steamship Co., Inc.; Notice of Application for All Necessary Approvals for Time Charter of Replacement Vessels and Transfer of Subsidized Sailings

By letter dated June 29, 1990, Lykes Bros. Steamship Co., Inc. (Lykes) and First American Bulk Carrier Corporation (FABC) have advised the Maritime Administration (MARAD) that they have entered into a three-year time charter for the Delaware Bay and Chesapeake Bay (Vessels), subject to obtaining the required approvals from the Maritime Subsidy Board (MSB)/MARAD. Lykes' Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB-451 authorizes up to 60 annual subsidized sailings on Trade Route (TR) 21. The charter arrangements provide that the Vessels will be operated on TR 21 with the benefit of operating subsidy through the transfer by Lykes to FABC of 20 annual subsidized sailings (on a pro-rata basis for the first and last years) under ODSA, Contract MA/MSB-451.

FABC is a wholly-owned subsidiary of the MEBA Pension Trust, a tax exempt pension trust under Federal law. The June 29 letter states that each member of the board of directors of FABC and each of the trustees of the MEBA Pension Trust are U.S. citizens. Both Lykes and FABC have previously been found by MARAD to be a section 2 citizen under the Shipping Act, 1916, as amended.

A time charter linked together with a transfer of an interest in the Lykes' ODSA, was determined to be the only manner in which the objectives of fulfilling FABC's stringent fiduciary responsibility to limit the economic risks to the Pension Fund could be met. This arrangement requires that Lykes transfer an interest in the ODSA to FABC for the operation of the Vessels for a maximum of 20 of the existing 60 annual sailings on TR 21. It is contemplated that upon expiration of the time charters, so long as Lykes has fulfilled all of its obligations under the time charter, the remaining authority to operate the subsidized services shall be returned to Lykes.

Under the time charters, Lykes will have use of the full capacity of the Vessels. The Vessels will be operated in Lykes' service on TR 21. With these Vessels and the four vessels which Lykes is currently operating, Lykes feels that it will be able to offer the frequency of U.S. flag service, which the trade requires.

The Vessels were constructed pursuant to authority provided in section 615 of the Merchant Marine Act, 1936, as amended (Act), and as such are eligible for operating-differential subsidy (ODS). The construction costs of the Vessels were financed through a leveraged lease transaction with Connecticut National Bank, as Owner Trustee for the benefit of Chrysler Financial Corporation, under which FABC, is a long-term "hell & highwater" bareboat charterer.

Under the bareboat charters, FABC has the customary responsibilities and risks of vessel ownership and operation. FABC will either operate or enter into a management agreement with an independent third party (the Management Company) approved by FABC, Lykes, and MARAD to perform certain functions related to the operation of the Vessels. Notwithstanding any delegation of certain operational functions to the Management Company, the board of FABC and the trustees of the (MEBA Pension Trust), as fiduciaries, will continue to have responsibility for the efficient and economical operation of the Vessels.

If Lykes' application herein for a transfer of an interest in its ODSA for the Vessels is approved, Lykes believes that substantial benefits to FABC, Lykes and the American-flag merchant marine will accrue. ODS will permit the Vessels to improve significantly their prospects for economic operation and enable them to more efficiently compete for cargoes available in their market. Lykes' requests approval of these Vessels as replacement vessels under the ODSA. In Lykes' view, the use of the two Vessels by Lykes will enhance the competitiveness of Lykes by making available replacement tonnage that is modern, state of the art and requires crewing (21) that is significantly less than most of Lykes' fleet.

In addition, request is made on behalf of Lykes and FABC for all approvals for Lykes, FABC and the Management Company (to be named) as are required to consummate the transaction as contemplated, including approvals required under the ODSA, Lykes' title XI agreements, and applicable statutory sections under the Act.

Section 608 of the Act and Article II-16 of Lykes' ODSA state that without the written consent of the MSB, an ODS operator shall not sell, assign, or transfer, either directly or indirectly, or through any reorganization, merger or consolidation, any interest in an ODSA, nor shall any agreement or arrangement be made by an ODS operator whereby the maintenance, management or operation of any subsidized vessel(s) or essential service(s) of the operator is to be performed by any other person. In the event the MSB consents to such agreement or arrangement, the agreement or arrangement shall provide that the person undertaking such maintenance, management or operation agrees to be bound by all the provisions of the ODSA and of the Act applicable thereto and the rules and regulations prescribed pursuant to the Act.

Any person, firm, or corporation having any interest in the application and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590, by the close of business on July 23, 1990.

This notice is published as a matter of discretion, and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

[FR Doc. 90-15979 Filed 7-9-90; 8:45 am]

BILLING CODE 9410-81-M

National Highway Traffic Safety Administration

[Docket No. 90-03-IP-N02]

Cadillac Plastic and Chemical Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Cadillac Plastic and Chemical Company (Cadillac), of Mishawaka, Indiana, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.205,

Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials." The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 28, 1990, and an opportunity afforded for comment (55 FR 11497).

Paragraph S6.4 specifies that each manufacturer or distributor who cuts a section of glazing material for use in a motor vehicle or camper shall mark that material in accordance with section 6 of ANSI Z26.1.

Section 6 of ANSI Z26.1 requires that safety glazing materials manufactured for use in accordance with this code be legibly and permanently marked with the words "American National Standard" or the characters "AS" with a model number that will identify the type of construction of the glazing material, and with the manufacturer's distinctive designation or trademark.

Cadillac produced and sold 96 pieces of glazing to Grumman Allied that lacked the manufacturer designation, the AS designation and the model number. Fifty-four of the ninety-six noncompliant pieces were replaced with conforming parts before leaving Grumman Allied's facilities. Therefore, the petition for inconsequential noncompliance applies to only the remaining forty-two pieces of glazing that were shipped and not replaced.

Cadillac reported that it does not believe the deviation from Standard No. 205 is safety related and that except for marking, the windows meet the requirements. Cadillac also indicated that internal retraining has been undertaken to assure that all windows will be correctly marked in the furture.

No comments were received on the petition.

The agency has reviewed Cadillac's petition, and found it similar to several that have been considered in the past. Flexible Company failed to mark certain plastics as AS4 or AS5 (IP76–10). Suzuki did not mark certain motorcycle windshields as AS6 (IP79–9). Lafer S.A. omitted the designation AS2 from 50 side window kits (IP80–13). In each instance the agency granted the petition as a simple labeling failure whose effect upon motor vehicle safety was inconsequential. The petitioner has stated that the glazing meets all other requirements of Standard No. 205. Upon further investigation, the agency has learned that the unmarked glazing was AS5, and intended for use as original equipment in step vans manufactured by Grumman Allied. Thus, the glazing is being installed for its intended use, and will not be replacement equipment where, in its unmarked state, it might be substituted for AS4 (which much meet luminous transmittance requirements), or other types of glazing.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued: July 3, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–15914 Filed 7–9–90; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 90–02–IP–N02]

Mazda Motor Corp. of Grant of Japan; Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Mazda Motor Corporation of Japan, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.120, Federal Motor Vehicle Safety Standard No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars." The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 1, 1990, and an opportunity afforded for comment (55 FR 7404).

Section S5.2(a) of Standard No. 120 requires a designation which indicates the source of the rim's published nominal dimensions. Section S5.2(c) requires that rims be worded with the symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable motor vehicle safety standards.

During the period of September 5, 1989 to November 11, 1989, Mazda fitted 3,352 units of the 1990 Model Year B2200 and B2600i pick-up truck vehicles with wheel rims that do not comply with sections S5.2(a) and (c). These vehicles lacked the required designation which indicates the source of the rim's published nominal dimensions and the "DOT" symbol.

To support its petition for inconsequential noncompliance Mazda provided the following arguments:

The non-compliance does not affect vehicle performance as the rim and tires are properly matched.

The correct tire sizes which match the wheel rim are stated on the tire placard that is affixed to the vehicle pursuant to 49 CFR 571, 120, section 5.3.

Pursuant to 49 CR 571.120 section 5.2(d), the rim's manufacturer or Mazda may be contacted for tire and rim replacement information.

No comments were received on the petition.

The agency has reviewed Mazda's petition and its arguments. With respect to the failure to label the rims with the DOT symbol, NHTSA has in other instances regarded this as a failure of the obligation to certify compliance under section 114 of the National Traffic and Motor Vehicle Safety Act rather than a noncompliance with a safety standard that would subject the manufacturer at fault to the notification and remedy obligations of the Act. Thus, it regards this failure to comply with S5.2(c) as outside the coverage of the petition.

As for the failure to indicate the source of the rim's published dimensions, the omission of this information is not so critical that a consumer would be unable to match the proper size of the rim at the time of replacement. There are many sources available for finding rim information including the manufacturer, Mazda, itself. At worst, it might be less convenient for service personnel to confirm minor rim data at the time of replacement. The rims otherwise meet Standard No. 120, and correct tire sizes which match the rim are provided.

In consideration of the foregoing, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: July 3, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–15915 Filed 7–9–90; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 90–13–IP–No. 1]

Takata–Gerico Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Takata–Gerico Corporation, of Denver, Colorado, has petitioned to be exempted from the notification and

remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.213, Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.4.3.5 *Buckle Release* of Standard No. 213 states in pertinent part, that:

> Any buckle in a child restraint system belt assembly designed to restrain a child using the system shall: (a) When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than nine pounds is applied and shall release when a force of not more than 14 pounds is applied.

The Takata-Gerico Corporation believes that approximately 26,257 buckles that could release with less than nine pounds of pressure (e.g., eight pounds) were incorporated in Gerry Guardian car seats manufactured between January 31, 1990 and May 3, 1990. Takata-Gerico supports its petition for inconsequential noncompliance on the basis of the results of the Yellowstone Environmental Science study entitled, *Cognitive Skill Based Child-Resistant Safety Belt Buckle* (March 1990). It claims that this study concluded that the "ideal" minimum release tension should be five pounds, and the escaping child problem is better solved by providing a more comfortable and better designed seat and buckle assembly. These findings were based on the following:

1. Alleged excessive force requirements, such as those required under Standard 213, can "impede" rescue in an emergency situation. *Id.* at 79.
2. The upper limit of thumb opposability strength of a child from two to four years old is forty pounds. *Id.* at 45. [Takata-Gerico stated that studies show that children under three years of age are likely to use the Guardian car seat and children in this age group are physically incapable of releasing a belt buckle at seven pounds.]
3. A study of 1500 children, whose car seat habits were studied, revealed that children escape from car seats through means other than releasing the belt buckle. *Id.* at 16.
4. A car seat design in which the child is denied access to the car seat buckle is more important in ensuring that the child remains restrained while in the car seat than the pounds of pressure needed to release the belt buckle. *Id.* at 46. [In the Yellowstone study a car seat was used which had the belt buckle located in the same position as that of the Guardian belt buckle. The study revealed that the position of these belt buckles resulted in children rarely releasing the car safety seat harness buckle.]
5. Push-button buckle release mechanisms with force requirements less than nine pounds were acceptable to parents. *Id.* at 32.
6. An excessive force requirement is above the strength abilities of older people, *i.e.*, grandparents, thus discouraging or making impossible the use of child car seats by the older persons. *Id.* at 37, 45 (stating that the lower limit of thumb opposability strength of 61 to 94 years olds is thirteen pounds).

Interested persons are invited to submit written data, views and arguments on the petition of Takata-Gerico, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 9, 1990.

Authority: 15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on July 3, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-15916 Filed 7-9-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1989, and ending June 30, 1990. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

Stephen E. Garmon—Deputy Director, U.S. Secret Service
Guy P. Caputo—Assistant Director, Protective Operations (USSS)
Jack A. Renwick—Assistant Director, Inspection (USSS)
David C. Lee—Assistant Director, Administration (USSS)
Robert R. Snow—Assistant Director, Government Liaison & Public Affairs (USSS)
Don A. Edwards—Assistant Director, Training (USSS)
H. Terrence Samway—Assistant Director, Protective Research (USSS)
Garry M. Jenkins—Assistant Director, Investigations (USSS)
Raymond A. Shaddack—Deputy Assistant Director, Protective Operations (USSS)
Stephen T. Harrison—Deputy Assistant Director, Protective Operations (USSS)
Richard S. Miller—Deputy Assistant Director, Protective Operations (USSS)
Michael S. Smelser—Deputy Assistant Director, Protective Research (USSS)
Hubert T. Bell—Deputy Assistant Director, Investigations (USSS)
John J. Kelleher—Chief Counsel, U.S. Secret Service

FOR ADDITIONAL INFORMATION CONTACT: Susan T. Tracey, Chief Personnel Division, Room 901, 1800 G Street NW., Washington, DC 20223, Telephone No. 202-535-5635.

John R. Simpson,

Director.

[FR Doc. 90-15892 Filed 2-9-90; 8:45 am]

BILLING CODE 4810-42-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 132
Tuesday, July 10, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, July 11, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: FY 92 Budget.

The staff will brief the Commission on issues related to the CPSC Budget for Fiscal Year 1992.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-16159 Filed 7-6-90; 1:17 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, July 12, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 1. *CP 89-2, Heat Tapes Petition.*—The staff will brief the Commission on petition CP 89-2 from Christian B. Stegeman and others requesting the Commission to issue a safety standard for electric heat tapes.

2. *Voluntary Standards Status Report.*—The staff will brief the Commission CPSC voluntary standards activities.

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-16160 Filed 7-6-90; 1:17 pm]

BILLING CODE 6355-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC TO HOLD OPEN COMMISSION MEETING, THURSDAY, JULY 12, 1990

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 12, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW.

Item No., Bureau, and Subject

1—Mass Media—Title: Television Satellite Stations: Review of Policy and Rules. (MM Docket No. 87-8). Summary: The Commission will consider whether to adopt a Further Notice of Proposed Rulemaking regarding policies and rules concerning television "satellite" stations. "Satellite" stations are full-power terrestrial television stations that rebroadcast all, or most, of the programming of a commonly-owned parent television station.

2—Mass Media—General Counsel—Title: Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. Section 1464, (MM Docket No. 89-494). Summary: The Commission will consider whether to adopt a Report on enforcing the statutory indecency prohibition on a 24-hour-day basis.

3—Common Carrier—Title: Regulatory Policies and International Telecommunications. Summary: The Commission will consider whether to adopt a Notice of Proposed Rulemaking to modify its regulatory treatment of U.S. carrier accounting and settlement arrangements with their foreign correspondents.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 5, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-16099 Filed 7-6-90; 10:08 am]

BILLING CODE 6712-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, July 13, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-16095 Filed 7-5-90; 5:03 pm]

BILLING CODE 6210-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 9:30 a.m., Thursday, July 12, 1990.

PLACE: Eight Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The request for reopening and reconsideration by 117 former air traffic controller appellants removed for participation in the 1981 strike.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: July 6, 1990.

Matthew Shannon,

Acting Clerk of the Board.

[FR Doc. 90-16163 Filed 7-6-90; 1:18 pm]

BILLING CODE 7400-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, July 17, 1990.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, S.W., Washington, D.C. 20594.

STATUS: The first two items are open to the public. The last two items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Highway Accident Report: Collision Between Mission Consolidated Independent School District School Bus and Valley Coca-Cola Bottling

Company, Inc., Tractor-Semitrailer, Intersection of Bryan Road and Texas Farm-to-Market Road 676, Alton, Texas, September 21, 1989.

2. Highway Accident Report: Collapse of the Harrison Road Temporary Bridge in Miamitown, Ohio, May 26, 1989.

3. Opinion and Order: Administrator v. Skryack, Docket SE–8658; disposition of respondent's appeal.

4. Opinion and Order: Administrator v. Bolster, Docket SE–8971; disposition of the Administrator's appeal.

News Media Contact: *MELBA MOYE, 382–6600.*

FOR MORE INFORMATION CONTACT: Ray Smith (202) 382–6525.

Ray Smith,

Alternate Federal Register Liaison Officer.

July 6, 1990.

[FR Doc. 90–16185 Filed 7–6–90; 3:06 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 9, 16, 23, and 30, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 9

There are no Commission meetings scheduled for the Week of July 9.

Week of July 16 (Tentative)

Monday, July 16

2:00 p.m.—Briefing by NUMARC on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)

Wednesday, July 18

2:00 p.m.—Briefing on Essentially Complete Design Issue for Part 52 Submittals (Public Meeting)

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 23 (Tentative)

Thursday, July 26

1:00 p.m.—Affirmation/Discussin and Vote (Public Meeting) (if needed)

Week of July 30 (Tentative)

Wednesday, August 1

10:00 a.m.—Briefing on BEIR V Report and ICRP Statement of New Dose Limits (Public Meeting)

Thursday, August 2

11:30 a.m.—Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meetings call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

July 5, 1990.

[FR Doc. 90–16180 Filed 7–6–90; 3:05 pm]

BILLING CODE 7590–01–M

Federal Register

Tuesday
July 10, 1990

Part II

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Revisions to Vinyl Chloride; Equipment Leaks of Volatile Hazardous Air Pollutants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3752-3]

National Emission Standards for Hazardous Air Pollutants; Revisions to Vinyl Chloride; Equipment Leaks of Volatile Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 21, 1989 (54 FR 38938), EPA proposed minor revisions to national emission standards for vinyl chloride (VC) and equipment leaks of volatile hazardous air pollutants. The revisions to the national emission standards for hazardous air pollutants (NESHAP) were proposed as a result of petitions for reconsideration and review filed by the Society of the Plastics Industry, Inc. (SPI), Dow Chemical Company, Georgia Gulf Corporation, and Vista Chemical Company. This action promulgates final revisions to the NESHAP. The intended effect of this action is to grant the petitioners' request for clarification of ambiguities in several definitions and in the applicability of certain regulatory requirements in the standards.

This notice is not intended to address the July 28, 1987, decision by the D.C. Circuit Court on the VC standards, *Natural Resources Defense Council, Inc.* v. *EPA*, 824 F.2d 1146 (1987). Any response to that decision will be made in a future notice in the **Federal Register**.

DATES: *Effective Date:* July 10, 1990.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before September 10, 1990. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A-81-21, containing information considered by EPA in the development of the promulgated standards and the petitions for reconsideration, to which this notice is responding, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE-131), Room M1500, First Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information and interpretations of applicability, compliance requirements, and reporting aspects of the revised standards, contact the appropriate Regional, State, or local office contact as listed in 40 CFR 60.4. For further information on the background for the final revised standards, contact Ms. Shirley Tabler, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone, (919) 541-5256.

SUPPLEMENTARY INFORMATION:

I. Background

In December, 1975, EPA designated VC as a hazardous air pollutant under section 112 of the Clean Air Act (42 U.S.C. 7412) and promulgated final rules for VC on October 21, 1976 (40 CFR 61.60-61.71). The standards limit emissions of VC from plants producing ethylene dichloride (EDC) via oxychlorination, VC, and polyvinyl chloride (PVC) or other polymers containing VC. These plants are subject to a combination of emission limits, equipment, and work practice requirements at numerous points in the manufacturing processes.

On September 30, 1986 (51 FR 34904), EPA promulgated several administrative and clarifying revisions to the national emission standard for VC. Subsequently, on November 26, 1986, SPI filed with EPA a petition for stay and administrative reconsideration of seven provisions in the final revisions to the VC standard. The SPI, Dow Chemical Company, Georgia Gulf Corporation, and Vista Chemical Company concurrently filed a petition for review of several provisions of the revised standard with the U.S. Court of Appeals for the D.C. Circuit. The petitioners asserted that without adequate notice, EPA's 1986 revisions changed key provisions of the VC standard in a manner that: (1) violated case law; (2) imposed new penalties; (3) created multiple penalties for the same event; and (4) expanded the types of equipment subject to the standard.

In summary, the petitioners requested review of the definitions of "exhaust gas," "relief valve discharge," "leak," "3-hour period," and "ethylene dichloride purification"; the scope of the relief valve discharge provisions; and the leak detection and elimination provisions (area monitoring). The SPI also requested that EPA issue a stay of the 1986 revisions to the VC standard pending review of those revised provisions.

The revisions proposed on September 21, 1989, were in regard to clarifications to the definitions. No changes, however, were made with regard to fixed area monitoring requirements or the relief valve discharge standard. In the 1989 proposal preamble, EPA also denied the petitioner's request for a stay of the 1986 revised provisions. A detailed discussion of the issues presented in the petitions for review and EPA's response to the issues is contained in the preamble for the proposed revisions (54 FR 38938-38942).

II. Public Participation

The proposed revisions to the NESHAP were published in the **Federal Register** on September 21, 1989 (54 FR 38938). A public hearing was scheduled on October 18, 1989. However, there were no requests for a hearing. The public comment period lasted from September 21, 1989 to November 20, 1989. Two comment letters were received from the industry, both of which had filed petitions for review of the 1986 revisions. Both commenters expressed their support of the proposed revised provisions of September 21, 1989, and stated that the revised provisions respond to the concerns filed in their petitions for review. The commenters did not request any additional changes to the NESHAP.

III. The Promulgated Revisions

The clarifying revisions being promulgated today are identical to those proposed on September 21, 1989. The following is a summary of the promulgated revisions.

A. The definition of "exhaust gas" has been modified by adding two sentences which clarify that a leak is not an exhaust gas, and that equipment containing exhaust gas must comply with the leak detection and prevention provisions (§ 61.65(b)(8)), whether or not that equipment contains 10 percent by volume VC. This addition assures that leaks from exhaust gas streams are subject to the leak detection and elimination requirements, but that such leaks will not also be classified as "exhaust gas."

B. Minor revisions were made to the definition of "relief valve discharge" and to the relief valve discharge (RVD) provisions (§ 61.65(a)) to clarify that an RVD routed to a properly designed and operated control device would be exempted from the provisions of the RVD standard. This change prevents misinterpretation of the regulatory

requirements and imposition of a double penalty.

In addition, new provisions (§ 61.65(d)) have been added for an RVD that is ducted to a control device that is continually operating while emissions from the release are present at the device. An RVD that is ducted to a control device, other than a flare, would be subject to the 10 ppm limit and the continuous emission monitoring system requirement contained in § 61.68 and to the reporting requirements of § 61.70. In the case of flares, emission monitoring is not possible. Therefore, for RVD's routed to a flare, the design requirements for flares (40 CFR 60.18) would apply. The EPA recognizes that measurement of relief valve discharge volumetric flow rates and gas stream composition is not possible using the methods set forth in § 60.18 (f)(3) and (f)(4). Estimates of these parameters will, therefore, need to be based on empirical or other bases, subject to EPA approval. Flare operations would be monitored in accordance with the requirements of §§ 60.18(d) and 60.18(f)(2). For the purpose of § 60.18(d), the volume and component concentration of each RVD would be estimated and calculations would be made to verify ongoing compliance with the design and operating requirements of § 60.18 (c)(3) through (c)(6). If more than one relief valve is discharged simultaneously to a single flare, these calculations would account for the cumulative effect on all such RVD's. If the results of the monitoring contained in § 60.18(f)(2) or any other information show that the pilot flame is not present 100 percent of the time during which an RVD is routed to a flare, the RVD is subject to the provisions of § 61.65(a). A report describing the flare design must be provided to the Administrator not later than 90 days after the adoption of this provision or within 30 days of the installation of a flare system for control of RVD's, whichever is later.

C. The standards for pumps in VC service (§ 61.242-2(d)) were revised to clarify the requirements for pump seal drips. Section 61.242-2(d)(4) addresses drips from pump seals that contain VC, and § 61.242-2(d)(6) addresses drips from pump seals that do not contain VC.

The final revised provisions of § 61.242-2(d) are designed to accomplish two purposes. One is to ensure that VC leaks from pump seals are detected and eliminated. This is accomplished by paragraphs (d)(4) (i), (ii), and (iii). The other purpose is to identify and prevent pump seal failures by causing abnormal dripping (even when VC is not contained in the dripping liquid) to be detected and repairs to be made. This is accomplished by paragraphs (d)(6) (i), (iii), and (iv). These paragraphs require the facility owner or operator to establish criteria associated with normal operation.

The intent of the final provisions is identical to the existing provision. The difference is that the promulgated provisions of § 61.242-2(d)(6)(i) allow an owner or operator to take into account the small number of liquid drips that may occur when new seals are in place or are otherwise associated with normal operation.

D. The definition of "3-hour period" has been revised to ensure that a single event of 1-hour or less at 10 ppm or greater could result in no more than a single violation of the exhaust gas standard. A phrase has been added to the definition of "3-hour period" in § 61.51(z) to accomplish this. The EPA did not intend to penalize a plant three times whenever a 10 ppm event occurs within 1 hour. Rather, EPA wanted to ensure that a combination of two or more 10 ppm events which would result in a 3-hour exceedance do not go unpenalized just because they occurred over two separate 3-hour "blocks." The promulgated revised definition of "3-hour period" satisfies EPA's intent without unintentionally subjecting a plant owner or operator to multiple violations.

E. The definition of "EDC purification" has been revised to clarify that emissions from crude, intermediate, and final storage tanks following EDC formation are not subject to the exhaust gas standard. (The 1986 revisions exempted only final storage tanks.) In addition, § 61.65(b)(6), Opening of equipment, has also been revised to clarify that the requirements in this section do not apply to crude, intermediate, or final EDC storage tanks. As stated in the proposal preamble, the regulation of these storage tanks is unnecessary because emissions are extremely low.

F. In addition to the changes made in response to the petitions for reconsideration, a minor clarification has been made in § 61.68, Emission monitoring. Since it is obvious that paragraph (a) of § 61.68 calls for the monitoring of the emissions from prescribed sources for vinyl chloride and not ambient air sampling as required under § 61.65(b)(8) for leak detection/elimination, § 61.68(b) has been clarified to require that representative (not air) samples from one or more applicable emission points be obtained and analyzed. This promulgated revision more accurately reflects the original intent.

IV. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated revisions, and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (sec. 307(d)(7)(A)).

B. Paperwork Reduction Act

There are no additional information collection requirements associated with this rulemaking.

C. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This final rulemaking is not major because it makes minor clarifying revisions to an existing regulation and, therefore, results in none of the significant adverse economic effects described in the Order.

This rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are included in Docket No. A-81-21. The docket is available for public inspection at EPA's Air Docket Section that is listed under the **ADDRESSES** section of this notice.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these minor revisions impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the final rule will not have a significant economic

impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Coke oven emissions, Hazardous substances, Incorporations by reference, Inorganic arsenic, Intergovernmental relations, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride, Volatile hazardous air pollutants.

Dated: July 3, 1990.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.61 is amended by revising paragraphs (o), (w), (x), (y), and (z) to read as follows:

§ 61.61 Definitions.

* * * * *

(o) *Ethylene dichloride purification* includes any part of the process of ethylene dichloride purification following ethylene dichloride formation, but excludes crude, intermediate, and final ethylene dichloride storage tanks.

* * * * *

(w) *Leak* means any of several events that indicate interruption of confinement of vinyl chloride within process equipment. Leaks include events regulated under subpart V of this part such as:

(1) An instrument reading of 10,000 ppm or greater measured according to Method 21 (see appendix A of 40 CFR part 60);

(2) A sensor detection of failure of a seal system, failure of a barrier fluid system, or both;

(3) Detectable emissions as indicated by an instrument reading of greater than 500 ppm above background for equipment designated for no detectable emissions measured according to Test Method 21 (see appendix A of 40 CFR part 60); and

(4) In the case of pump seals regulated under § 61.242–2, indications of liquid dripping constituting a leak under § 61.242–2.

Leaks also include events regulated under § 61.65(b)(8)(i) for detection of ambient concentrations in excess of background concentrations. A relief valve discharge is not a leak.

(x) *Exhaust gas* means any offgas (the constituents of which may consist of any fluids, either as a liquid and/or gas) discharged directly or ultimately to the atmosphere that was initially contained in or was in direct contact with the equipment for which gas limits are prescribed in §§ 61.62(a) and (b); 61.63(a); 61.64 (a)(1), (b), (c), and (d); 61.65 (b)(1)(ii), (b)(2), (b)(3), (b)(5), (b)(6)(ii), (b)(7), and (b)(9)(ii); and 61.65(d). A leak as defined in paragraph (w) of this section is not an exhaust gas. Equipment which contains exhaust gas is subject to § 61.65(b)(8), whether or not that equipment contains 10 percent by volume vinyl chloride.

(y) *Relief valve discharge* means any nonleak discharge through a relief valve.

(z) *3-hour period* means any three consecutive 1-hour periods (each commencing on the hour), provided that the number of 3-hour periods during which the vinyl chloride concentration exceeds 10 ppm does not exceed the number of 1-hour periods during which the vinyl chloride concentration exceeds 10 ppm.

3. Section 61.65 is amended by revising paragraphs (a) and (b)(6) introductory text, and adding paragraph (d) to read as follows:

§ 61.65 Emission standard for ethylene dichloride, vinyl chloride and polyvinyl chloride plants.

* * * * *

(a) *Relief valve discharge.* Except for an emergency relief discharge, and except as provided in § 61.65(d), there is to be no discharge to the atmosphere from any relief valve on any equipment in vinyl chloride service. An emergency relief discharge means a discharge which could not have been avoided by taking measures to prevent the discharge. Within 10 days of any relief valve discharge, except for those subject to § 61.65(d), the owner or operator of the source from which the relief valve discharge occurs shall submit to the Administrator a report in writing containing information on the source, nature and cause of the discharge, the date and time of the discharge, the approximate total vinyl chloride loss during the discharge, the method used for determining the vinyl chloride loss (the calculation of the vinyl chloride loss), the action that was taken to prevent the discharge, and measures adopted to prevent future discharges.

(b) * * *

(6) *Opening of equipment.* Vinyl chloride emissions from opening of equipment (excluding crude, intermediate, and final EDC storage tanks, but including prepolymerization reactors used in the manufacture of bulk resins and loading or unloading lines that are not opened to the atmosphere after each loading or unloading operation) are to be minimized follows:

* * * * *

(d) A RVD that is ducted to a control device that is continually operating while emissions from the release are present at the device is subject to the following requirements:

(1) A discharge from a control device other than a flare shall not exceed 10 ppm (average over a 3-hour period) as determined by the continuous emission monitor system required under § 61.68. Such a discharge is subject to the requirements of § 61.70.

(2) For a discharge routed to a flare, the flare shall comply with the requirements of § 60.18.

(i) Flare operations shall be monitored in accordance with the requirements of §§ 60.18(d) and 60.18(f)(2). For the purposes of § 60.18(d), the volume and component concentration of each relief valve discharge shall be estimated and calculation shall be made to verify ongoing compliance with the design and operating requirements of §§ 60.18 (c)(3) through (c)(6). If more than one relief valve is discharged simultaneously to a single flare, these calculations shall account for the cumulative effect of all such relief valve discharges. These calculations shall be made and reported quarterly for all discharges within the quarter. Failure to comply with any of the requirements of this paragraph will be a violation of § 61.65(d)(2). Monitoring for the presence of a flare pilot flame shall be conducted in accordance with § 60.18(f)(2). If the results of this monitoring or any other information shows that the pilot flame is not present 100 percent of the time during which a relief valve discharge is routed to the flare, the relief valve discharge is subject to the provisions of § 61.65(a).

(ii) A report describing the flare design shall be provided to the Administrator not later than 90 days after the adoption of this provision or within 30 days of the installation of a flare system for control of relief valve discharge whichever is later. The flare design report shall include calculations based upon expected relief valve discharge component concentrations and net heating values (for PVC this calculation shall be based on values expected if a release occurred at the instant the polymerization starts); and estimated maximum exit velocities based upon the design throat capacity of the gas in the relief valve.

4. Section 61.68 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 61.68 Emission monitoring.

* * * * *

(b) The vinyl chloride monitoring system(s) used to meet the requirement in paragraph (a) of this section is to be a device which obtains representative samples from one or more applicable emission points on a continuous sequential basis and analyzes the samples with gas chromatography or, if the owner or operator assumes that all hydrocarbons measured are vinyl chloride, with infrared spectrophotometry, flame ion detection, or an alternative method. * * *

* * * * *

5. Section 61.242–2 of subpart V is amended by revising paragraphs (d) introductory text, (d)(5), and (d)(6), and by adding paragraphs (d)(4) (i), (ii) and (iii) to read as follows:

§ 61.242–2 Standards: Pumps.

* * * * *

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraphs (a) and (b) of this section, provided the following requirements are met:

* * * * *

(4) * * *

(i) If there are indications of liquid dripping from the pump seal at the time of the weekly inspection, the pump shall be monitored as specified in § 61.245 to determine the presence of VOC and VHAP in the barrier fluid.

(ii) If the monitor reading (taking into account any background readings) indicates the presence of VHAP, a leak is detected. For the purpose of this paragraph, the monitor may be calibrated with VHAP, or may employ a gas chromatography column to limit the response of the monitor to VHAP, at the option of the owner or operator.

(iii) If an instrument reading of 10,000 ppm or greater (total VOC) is measured, a leak is detected.

(5) Each sensor as described in paragraph (d)(3) of this section is checked daily or is equipped with an audible alarm.

(6)(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(ii) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (d)(6)(i) of this section, or if, based on the criteria established in paragraph (d)(6)(i) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except as provided in § 61.242–10.

(iv) A first attempt at repair shall be made no later than five calendar days after each leak is detected.

* * * * *

[FR Doc. 90–16015 Filed 7–9–90; 8:45 am]
BILLING CODE 6560–50–M

Federal Register

Tuesday
July 10, 1990

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Birds; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1990–91 early-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks or outer limits for dates and times when hunting may occur and the number of birds that may be taken and possessed in early seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed early-seasons frameworks will end on July 20, 1990; and for late-season proposals on August 27, 1990. A public hearing on late-season regulations will be held on August 2, 1990, starting at 9 a.m.

ADDRESSES: The August 2 public hearing will be held in the Auditorium of the Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which generally may open before October 1, and late seasons are those which may open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover doves and pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; early (September) waterfowl seasons; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and extended falconry seasons. Late seasons include the general waterfowl seasons and coots; and, in the Pacific Flyway, moorhens and gallinules.

Regulations Schedule for 1990

On March 14, 1990, the Service published for public comment in the **Federal Register** (55 FR 9618) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 6, 1990, the Service published for public comment a second document (55 FR 23178) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 21, 1990, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 14 (55 FR 9618), June 6 (55 FR 23178), and June 8 (55 FR 23487), 1990, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1990–91 season. All pertinent comments on the March 14 proposals received through June 17, 1990, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods are specified above under **DATES**. Final regulatory frameworks for migratory game bird hunting seasons for early seasons are scheduled for publication in the **Federal Register** on or about August 8, 1990.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published on March 14, 1990, in the **Federal Register** (55 FR 9618). The regulations for early waterfowl hunting seasons proposed in this document are based on the most current information available about the status of waterfowl populations and habitat conditions on the breeding grounds.

Special Assessments

As was discussed in the March 14, 1990, **Federal Register** (55 FR 9618), the Service is in the process of completing assessments on several regulatory issues for ducks. Two of these issues, shooting hours and September teal seasons, pertain to early-season regulations. The Service has, therefore, analyzed the comments received so far and developed long-term strategies to guide our future management decisions for these two issues. Comments received and long-term strategies for the late-season issues will be discussed in the appropriate **Federal Register** documents.

Shooting Hours

The Central and Atlantic Flyway Councils and the Florida Game and Fresh Water Fish Commission recommended shooting hours beginning at one-half before sunrise for regular and special duck seasons. The Mississippi Flyway Council Regulations Committees recommended that shooting hours begin at one-half hour before sunrise for regular seasons, but at sunrise during special duck seasons or where special circumstances exist. The Maryland Department of Natural Resources commented that a sunrise opening may have contributed to a decline in their State duck harvest in 1988, and had overly restricted the opportunity to harvest wood ducks. The Regional Director, Fish and Wildlife Service—Region 4, pointed out that there was little need for sunrise opening for September wood duck seasons in southern latitudes.

The Service proposes the following long-term strategy for shooting hours during duck seasons:

Allow shooting hours to begin at one-half hour before sunrise during the regular duck season. For species-specific duck seasons, shooting hours will begin at sunrise. Currently, shooting hours begin at one-half hour before sunrise for September wood duck seasons. States will be required to work with the Service in developing information needed to assess the impact of such shooting hours on non-target species, otherwise, shooting hours will be changed to sunrise. Shooting hours during all seasons shall end at sunset.

September Teal Seasons

The Lower Region Regulations Committee of the Mississippi Flyway Council and the Central Flyway Council recommended continued use of September teal seasons. The Upper Region Regulations Committee of the Mississippi Flyway Council recommended the continued use of these

seasons with additional requirements that would reinstate the season when teal populations increased, but would require improved information gathering for monitoring populations during periods of low duck abundance. The Maryland Forest, Park, and Wildlife Service and the Florida Game and Fresh Water Fish Commission recommended allowing special seasons for teal when population levels are determined to be satisfactory and the States can adequately evaluate the harvest. The Regional Director, Fish and Wildlife Service—Region 4, suggested that the report justifies the continued use of September teal seasons.

The Service proposes the following long-term strategy for September teal seasons:

The Service considers September teal seasons to be an acceptable harvest management strategy. September teal regulations (i.e. season length and bag limits) should be compatible with the Service's policy of permitting harvest opportunity consistent with duck population levels. September teal seasons in the Central and Mississippi Flyways must follow the geographic and framework criteria that were operational during the last year they were offered by the Service.

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These reports are briefly reviewed as a matter of public information. Unless otherwise noted, persons making the presentations are Service employees.

Mr. Brad Bortner, Woodcock Specialist, reported on the 1990 status of American woodcock. The report included harvest information gathered over the last 24 years and breeding population information (singing-ground survey) collected since 1968. The two surveys are cooperatively run by the U.S. Fish and Wildlife Service, Canadian Wildlife Service, and 39 State and Provincial wildlife agencies. Between 1988 and 1989 the recruitment index in the Eastern Region declined 6.3 percent from 1.6 to 1.5 immatures per adult female. The Central Region recruitment index increased 13.3 percent from 1.5 to 1.7 immatures per adult female. The daily and seasonal success indices did not change between 1988 and 1989 in the Eastern Region. The Central Region daily and seasonal success indices declined 7.7 percent and 6.7 percent, respectively, between 1988 and 1989. The breeding populations in both the Eastern and Central Regions were unchanged between 1989 and 1990. The Eastern Region breeding population has not significantly changed since 1985 when the Service initiated restrictive harvest regulations. However, no inferences can be made about the effect of these harvest regulations and the size of the population. Eastern Region breeding population trends indicate that the woodcock population is declining at the rate of 1.8 percent per year. Over the last 23 years, the Central Region breeding population has declined at the rate of 0.8 percent per year.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1989 mourning dove population. The report included information gathered over the last 25 years. Trends were calculated for the most recent 2- and 10-year intervals and for the entire 25-year period. Between 1989 and 1990, the number of doves heard per call-count route showed no significant change in the three units. Estimates indicated significant downward trends in the Western Unit for the 10- and 25-year periods. No significant trends were found in the Eastern and Central Units for either time frame. Trends for doves seen at the unit level over the 10- and 25-year periods agreed with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, presented information the status of white-winged and white-tipped doves in Texas. Results of the 1990 whitewing call-count survey indicate a nesting population of about 299,000 birds in the Lower Rio Grande Valley. This represents a 20 percent decline from last year and a 38 percent decline from the long-term average. Approximately 89 percent of the Valley population was nesting in native brush habitat and 11 percent was nesting in citrus groves. Surveys indicate nesting birds declined 10 percent in native brush and 59 percent in citrus groves when compared with 1989. In the Upper South Texas region, 371,000 whitewings were nesting throughout a 15-county area in 1990, an 18 percent increase from 1989. The population increase in Upper South Texas possibly reflects a redistribution of whitewings from the Valley. In West Texas (near Presidio), surveys indicate an 11 percent decline from 1989.

For white-tipped doves in the Lower Rio Grande Valley, surveys indicate a 26 percent decline, but the population still appears to be relatively healthy.

Mr. Roy Tomlinson, Southwest Dove Coordinator, presented a report on the status of whitewinged doves in Arizona. Following population declines during the 1970's, the Arizona Game and Fish Department instituted a series of restrictive regulations that have been in effect for 10 years. As a result, whitewing populations have since remained relatively stable at a reduced level. In 1989, the Arizona Department further restricted the whitewing season by requiring a half-day hunting period (½ hour before sunrise to noon) for the 10 hunting days selected in September. In 1989, the whitewing harvest declined 25 percent from 1988 and remained 53 percent below the 1978–87 average. The 1990 whitewing call-call survey in Arizona indicates a 9 percent decrease from 1989.

Mr. Tomlinson also discussed the status of band-tailed pigeons. Although population data are lacking, indications are that the Four-Corners Population that breeds in mountainous conifer habitat of Arizona, New Mexico, Utah, and Colorado, has remained stable for the past 20–25 years. The Pacific Coast Population—distributed throughout British Columbia, Washington, Oregon, Nevada, and California—is experiencing a severe population decline of unknown origin. Population surveys in Oregon and Washington indicate that moderate increase may have occurred during 1 or more years since 1988. Harvest remains low.

Mr. David Sharp, Central Flyway Representative, reported on the status of sandhill cranes. The Mid-continent Population appears to have stabilized following increases in the early 1980's. Preliminary estimates for 1990, uncorrected for visibility, indicated a spring population of about 391,000, only 1 percent lower than 1989 and still 11 percent above the 1982–89 average. All Central Flyway States except Kansas and Nebraska elected to allow crane hunting in a portion of their respective states in 1989–90; about 17,453 permits were issued and approximately 5,802 permittees hunted one or more times. Compared to 1988–89 seasons, the number of permittees increased about 7% and active hunters increased 11%. An estimated 13,596 cranes were harvested, which reflects a 6% increase over the 1988–89 estimate and is a record high for the 1975–89 period. Mid-continent cranes are also hunted in Alaska, Canada, and Mexico. The estimated retrieved harvest in Canada in 1989 was about 5,000. Figures for Alaska and Mexico are not available but are believed to be, collectively, less than 4,000. These estimates are within harvest guidelines established in the Mid-continent Sandhill Crane Management Guidelines.

Annual appraisals of the Rocky Mountain Population are conducted in March on its staging area in the San Luis Valley of Colorado. These indices

suggest that the population may have been relatively stable since 1984, but the 1989 figure of 17,100 was below objective levels of 18,000 to 22,000. The estimate for 1990 has not yet been adjusted for the percent of lesser sandhill cranes present and for observer visibility, but the unadjusted count of 20,262 indicates that the population level has increased from the 1989 level. Special limited seasons were held during 1989 under State permits in portions of Arizona, Wyoming, Utah, and New Mexico. These hunts resulted in harvests estimated at 820 greater sandhill cranes from the Rocky Mountain Population. This compares to about 446 taken from this population in 1988. Harvest management guidelines for this population will be reduced in 1990, due to a population index below 18,000 and reduced recruitment on the breeding grounds in recent years that has resulted from serious drought conditions.

Mr. Robert Blohm, Branch of Surveys, reported briefly on habitat conditions observed during the May survey. Overall, climatic events in late 1989 and in 1990 have cetainly benefited key waterfowl breeding areas, such as southern Canada, providing more water on the landscape for arriving waterfowl than has been reported in recent years. However, in the north-central States, particularly the Dakotas, wetland availability at the time of the survey has reverted to among the lowest levels of the 1980's. North of the grasslands, parkland and forested regions were generally favorable for breeding waterfowl in 1990, although the ultimate effect of persistent ice cover and late spring break-up on nesting effort is unknown at this time.

Since the survey, weather patterns have continued to favor prairie and parkland breeding areas, including the northern Great Plains of the United States, dropping normal amounts of rainfall over a widespread area, with certain localities receiving above normal amounts. Additionally, relatively moderate temperatures, unlike those of a year ago, have to date tended to lessen the rate of evaporation, while at the same time, have promoted good vegetative growth. In some regions, water levels have been maintained, while in others, although basins have not been recharged, soil moisture deficits have been reduced. Other areas, such as eastcentral Alberta, westcentral Saskatchewan, northeastern Montana, and the western two-thirds of North Dakota, remain extremely dry. On the other extreme, in westcentral Alberta, large areas have been flooded due to excessive rainfall.

The impacts on the landscape of intensified land-use in the 1980's is all too apparent. Although wetlands were more abundant in May than in recent years, little residual nesting cover was present anywhere in the prairies. Many fields had water-filled depressions but little or no associated margin or upland nesting habitat; conditions that likely discouraged early nesting activities. The strength of this year's overall reproductive effort in many areas is certainly enhanced by a more normal rainfall regime, subsequent vegetative growth, and likely availability of brood water unavailable in previous years. However, extremely dry conditions persist in other traditional nesting areas and it is too early to predict the overall impact of land use practices throughout the region on duck production in 1990 and on the amount of residual cover carried over for future years.

Comments Received at Public Hearing

Three individuals presented statements at the public hearing on proposed early-season regulations and one other submitted a written statement to be included as part of the hearing transcript. These comments are summarized below.

Mr. Ronnie R. George, representing the Central Flyway Council, made comments about the 1989–90 hunting season regulations as follows:

1. *September Teal Season*—Reinstatement of the September teal season is recommended. Although this season is dealt with separately because of the timing, it should be regarded as an integral part of the full fall duck season. Suspension of the early teal season in 1988 and 1989 resulted in reduced hunter interest in waterfowl seasons, reduced private lands waterfowl habitat enhancement programs, increased disease problems for wintering waterfowl including the loss of 10–15 thousand birds due to cholera, and no subsequent increase in teal numbers. After 19 years of operational seasons, the season has proven its worth, and should be reinstated under appropriate modifications to meet current needs.

2. *Utah Experimental Sandhill Crane Season*—Initiated in 1989, this hunt has been conducted in accordance with the Rocky Mountain Sandhill Crane Population Management Plan. Continuation of this hunt is recommended for 1990–91.

3. *Middle Rio Grande Valley Sandhill Crane Season*—Four years of experimental sandhill crane hunting in the Middle Rio Grande Valley, New Mexico have been completed under the guidelines of the Rocky Mountain Sandhill Crane Population Management Plan. Operational status for this hunt is recommended.

4. *Hatch/Deming Experimental Sandhill Crane Season*—This southern New Mexico crane hunt was not conducted in January 1990 because of harvest allotment restrictions on greater sandhill cranes in other areas of New Mexico. Changes in structure of State hunting allotments should solve this problem in the future and continuation of this experimental hunt is recommended.

5. *Basic Regulations*—Adoption of 1990 early season regulations as set forth by Service notification in the **Federal Register** and not addressed in comments 1–4 is recommended.

Representing the Texas Parks and Wildlife Department, Mr. George recommended continuation of the 4-day Special White-winged Dove Hunting Season in Texas. Continuation of the whitewing season will provide a strong incentive for ongoing habitat preservation and management on private lands. A possible alternative to the 4-day season is a 2-consecutive-day Special Whitewing Season combined with a modified aggregate daily bag limit of 12 doves, no more than 5 of which could be whitewings (presently 12 and 2, respectively) during the regular mourning dove season.

Mr. Dwight LeBlanc, Acting Deputy Administrator for the Animal Damage Control program, U.S. Department of Agriculture, supported the early-season Canada goose seasons and the special sandhill crane seasons. He stated that the Service should be receptive to the needs of farmers and landowners to help reduce or prevent crop depredation. Hunting helps disperse local populations of depredating birds and enhances the effectiveness of frightening tactics. This approach provides needed assistance to the agricultural producers who provide much of the required food and habitat for migratory birds. Increased recreational opportunities for hunters and decreased dependence on costly control measures are additional advantages.

Mr. Charles Kelley, representing both the Alabama Game and Fish Commission and the Southeast Association of Fish and Wildlife Agencies, commended the Service for its recent efforts in developing migratory bird hunting regulations and he further supported the proposed regulations for 1990. Mr. Kelley requested that the September teal season be reinstated at the appropriate time.

Mr. John Anderson, representing the National Audubon Society, although unable to attend, submitted a written statement to be included in the hearing record. He supported the proposed regulations for mourning doves, particularly the continued restrictions in the Western Management Unit, and reviewed the advantages and disadvantages of continuing the 4-day special white-winged dove season in Texas. He supported the regulations for sandhill cranes and woodcock. However, he recommended investigating the issue of February hunting, and, if woodcock start nesting in February in southern states, the hunting season should probably be closed by January 31. He further recommended that sportsmen, landowners, and wildlife administrators focus on improving the increasing woodcock habitat.

Written Comments Received

The preliminary proposed rulemaking which appeared in the **Federal Register** dated March 14, 1990, (55 FR 9618), opened the public comment period for early-season migratory game bird hunting regulations. As of June 17, 1990, the Service had received 22 comments, 12 of these specifically addressed early-season related issues. These early-season comments are summarized below and numbered in the order used in the March 14, 1990, **Federal Register.** Only the numbered items pertaining to early-season written comments are included.

1. Shooting Hours

One individual from Texas supported the Service's proposal for early-season shooting hours beginning at one-half hour before sunrise and extending until sunset.

5. Sea Ducks

One local organization from Massachusetts supported the Services proposal for sea duck seasons of 107 days with bag and possession limits of 7 and 14.

6. September Teal Season

The Lower Region Regulations Committee of the Mississippi Flyway Council recommends that the Service provide the option of a 3-day, 3-teal September season for blue-winged and green-winged teal in the southern portion of the Flyway. The Council believes that sport hunting in the U.S. has not contributed to the decline in the blue-winged teal population, and further states that these birds are early migrants. They further recommended that, if the teal season is reinstated, teal be included in the daily bag limit for the Experimental September Duck Seasons.

8. Experimental September Duck Seasons

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended continuation of these seasons. The Tennessee Wildlife Resources Agency urged the Service to thoroughly analyze data and make its evaluations available to the States and Flyway Council prior to any action to further reduce or eliminate the seasons. Due to the progress made toward initiating the regional banding programs and efforts to facilitate widespread data collection, mentioned in previous **Federal Register** documents, the Service is proposing to continue these experimental seasons for 1990.

14. Frameworks for Geese and Brant in the Conterminous United States—Outside Dates, Season Length and Bag Limits

a. Atlantic Flyway

i. The Atlantic Flyway Council recommended that an experimental early September Canada goose season be allowed for the western zone of Massachusetts. The expanding local goose population is causing an increase in nuisance problems and agricultural damage. It appears that the regular goose season is not of sufficient length or of correct timing to be able to significantly impact this population. The Council believes that an early September season will impact the local breeding population while avoiding migrant geese, and that the hunting pressure will cause nuisance geese to leave problem areas.

ii. The Atlantic Flyway Council recommended that an experimental early September Canada goose season be allowed in northern St. Lawrence County, New York. The State believes that recent changes in regulations intended to protect migrant Canada geese have led to an increased resident goose population; and that the proposed season will have no impact on migrant geese, but should help to reduce the potential for nuisance, public health, and crop depredation problems.

b. Mississippi Flyway

i. The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that an experimental early September Canada goose season be allowed for the metropolitan Milwaukee area of Wisconsin. The increasing resident goose population is causing substantial nuisance problems. Present harvest levels are inadequate to control the population growth. The proposed hunt would alleviate nuisance problems caused by resident geese while avoiding harvest of migrant geese.

ii. The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that the experimental early September Canada goose seasons in Minnesota, Michigan, and Illinois be continued for an additional year during the preparation of the final reports.

c. Pacific Flyway

i. The Pacific Flyway Council recommended that an early September Canada goose season be allowed for Cache County in Utah. Local geese are depredating small cereal grain crops. As a result of stable water conditions during recent nesting seasons, the Cache Valley goose population and associated depredation have increased. The State controls very little land in this area which can be managed to reduce depredations.

ii. The Pacific Flyway Council recommended that an experimental early September Canada goose season be allowed for the Lower Columbia River of Oregon and Washington. Northwestern Oregon and southwestern Washington provide migration and wintering habitat to seven Canada goose subspecies. Harvest regulations have been restricted out of concern for several subspecies. These restrictions, combined with improved nesting conditions for western Canada geese, have resulted in large increases in resident Canada goose numbers and increases in agricultural damage complaints. The proposed hunt would help alleviate crop depredation and avoid jeopardizing any migrant geese that winter in the area.

ii. The Pacific Flyway Council recommended that the special September Canada goose season in Wyoming be continued, but that the number of permits be reduced from 160 to 115.

16. Sandhill Cranes

a. The Central and Pacific Flyway Councils recommended that the experimental season in the Middle Rio Grange Valley of New Mexico be granted operational status.

b. The Central Flyway Council recommended continuation of other current experimental seasons.

c. The Pacific Flyway Council recommended that the frameworks continue to allow the harvest of cranes in more than one State by a hunter on a given day, provided that the hunter does

not exceed the Federal daily bag limit of 3 cranes.

20. Common Snipe

The Pacific Flyway Council and the Lower Region Regulations Committee of the Mississippi Flyway Council recommended no change in the frameworks for snipe, while the Upper Region Regulations Committee of the Mississippi Flyway Council specifically recommended no change in the framework dates. As a result of these comments, and the formation of a Webless Technical Committee in the Mississippi Flyway, the Service is deferring the proposal to modify the framework dates until the 1991–92 regulations development cycle. However, the Service continues to feel that some change is warranted. The Service will work with the Councils in the upcoming year to develop background material to determine the extent of change necessary.

21. Woodcock

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended no change in the frameworks, while the Upper Region Regulations Committee of the Mississippi Flyway Council specifically recommend that there be no change in the framework dates. The Tennessee Wildlife Resources Agency requested more time to properly evaluate the proposed modification in framework dates. As a result of these comments, and the formation of a Webless Technical Committee in the Mississippi Flyway, the Service is deferring the proposal to modify the framework dates until the 1991–92 regulations development cycle. However, the Service continues to feel that some change is warranted. The Service will work with the Councils in the upcoming year to develop background material to determine the extent of change necessary. The Pennsylvania Game Commission supported continuation of the restrictive regulations for the Eastern Region.

22. Band-tailed pigeons

The Pacific Flyway Council recommends that the daily bag limit be reduced from 4 to 2 pigeons and that the closing date for the northern zone of California be changed from October 15 to October 7.

23. Mourning Doves

The Pacific Flyway Council recommended no change for the frameworks for the Western Management Unit. Two individuals from California requested that the season be split into two equal 30-day segments. One of these individuals requested a 15-dove bag limit and the other requested that the season segments be in September and November.

24. White-wing doves

The Pacific Flyway Council recommended no change in frameworks. In the March 14 and June 6, 1990, **Federal Register**, the Service indicated its intention to consider modification of the special white-winged dove season in portions of Texas. Texas recommended continuation of this 4-day special season. However, they suggested a possible alternative of a 2-consecutive-day special season combined with a modified statewide aggregate bag limit. Currently, the 12-dove aggregate bag limit may include no more than 2 white-winged doves during the regular seasons. The Texas proposal would allow no more than 5 white-winged doves in the statewide aggregate bag limit. The framework section of this document outlines the modification proposed by the Service, a 2-consecutive-day special season with no changes in the aggregate bag limit. The Service remains concerned about the whitewing population in the Lower Rio Grande Valley, and, if the population requires additional protection in 1991–92, the Service will consider suspending the special season.

25. Migratory Bird Hunting in Alaska

The Pacific Flyway Council recommended no change in frameworks for Alaska, but recognized that some adjustment may need to be made later as more recent data becomes available on certain sensitive species.

26. Migratory Game Birds in Puerto Rico and Doves and Pigeons in the Virgin Islands

The Commonwealth of Puerto Rico recommended that Vieques Island be closed to the hunting of doves and pigeons due to concerns about habitat destruction caused by Hurricane Hugo. They further recommended that the waterfowl frameworks be modified to eliminate hunting in February in Puerto Rico. These modifications are described in the frameworks section of this document.

27. Migratory Game Bird Seasons for Falconers

The North American Falconers Association supported the falconry regulations as they were proposed for the 1990–91 season.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634–Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are coverred by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Endangered Species Act Consideration

The Division of Habitat Conservation is completing a biological opinion on the proposed action. As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. The Service's biological opinions resulting from consultation under Section 7 are considered public documents and are available for inspection in the Division of Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291 and the Paperwork Reduction Act

In the **Federal Register** dated March 14, 1990 (55 FR 9618), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and initiating a revision of the Final Regulatory Impact Analysis. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634–Arlington Square, Department of the Interior, Washington, DC 20240. As noted in the above **Federal Register** reference, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act.

Authorship

The primary author of this proposed rulemaking is William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1990–91 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of 1978 (92 Stat. 3112; 16 U.S.C. 712).

Dated: June 29, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

PROPOSED REGULATIONS FRAMEWORKS FOR 1990–91 EARLY HUNTING SEASONS ON CERTAIN MIGRATORY BIRDS

Pursuant to the Migratory Bird Treaty Act, and delegated authorities, the Director has approved proposed frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for mourning, white-winged and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; American woodcock; common snipe; sandhill cranes; early (September) waterfowl seasons; extended falconry seasons; and migratory birds in Alaska, Puerto Rico and the Virgin Islands.

NOTICE

Any State desiring its early hunting seasons to open in September must make its selection no later than August 9, 1990. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must also make their selections no later than August 9, 1990.

All outside dates noted below are inclusive and all shooting hours are between one-half hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by Falconry).

Mourning Doves

Outside Dates: Between September 1, 1990, and January 15, 1991, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit (All States East of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively. Hunting seasons may be split into not more than 3 periods under either option.

Zoning: Alabama, Georgia, Louisiana and Mississippi, may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—North Zone: That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line. *South Zone:* Remainder of the State.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interestate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative)

which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1990.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively. Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning—As an alternative to the basic frameworks, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones. Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in the portion of Texas where the special 2-consecutive-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1990 and January 25, 1991; the South zone between September 20, 1990 and January 25, 1991.

C. Except during the special 2-consecutive-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits—Idaho, Nevada, Oregon, Utah and Washington—Not more than 30 consecutive days. Bag and possession limits, 10/20 mourning doves (in Nevada, the daily bag and possession limits of mourning and white-winged dove may not exceed 10/20, respectively, singly or in the aggregate).

Arizona and California—Not more than 60 days to be split between two periods, September 1–15, 1990, and November 1, 1990–January 15, 1991. Bag and possession limits: in Arizona the daily bag limit is 10 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit is twice the daily bag limit. In California the bag and possession limits for mourning and white-winged doves are 10 and 20, singly or in the aggregate.

White-Winged Doves

Outside Dates: Arizona, California, Nevada, New Mexico, and Texas (except as shown below) may select hunting seasons between September 1 and December 31, 1990. Florida may select its hunting season between September 1, 1990 and January 15, 1991.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves. The possession limit is twice the daily bag limit.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1990, and January 15, 1991, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected), respectively; however, for either option, the aggregate bag and possession limits include no more than 4 and 8 white-winged doves, respectively.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 10 and 20, respectively, and the season will be concurrent with the season on mourning doves.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours will conform with those for mourning doves.

Texas may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1990, and January 25, 1991, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 may be white-tipped doves. The possession limit

may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 may be white-tipped doves.

and

In addition, Texas may also select a hunting season of not more than 2 consecutive days for the special white-winged dove area of the South Zone. In that portion of the special area north and west of Del Rio, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 4 may be white-tipped doves. In that portion of the special area south and east of Del Rio, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves; the possession limit may not exceed 20 doves in the aggregate, of which no more than 10 may be mourning doves and 4 may be white-tipped doves.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada Counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey

Outside Dates: Between September 15, 1990, and January 1, 1991.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 16 consecutive days, with bag and possession limits of 2 and 2, respectively.

Zoning: California may select hunting seasons of 16 consecutive days in each of the following two zones:

1. *North Zone*—In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. *South Zone*—The remainder of the State.

The season in the north zone of California must close by October 7.

Four-Corners States: Arizona, Colorado, New Mexico and Utah

Outside Dates: Between September 1 and November 30, 1990.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 6 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1990, in the North Zone and October 1 and November 30, 1990, in the South Zone.

Rails

Outside Dates: States included herein may select seasons between September 1, 1990, and January 20, 1991, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10 and 20 respectively, singly or in the aggregate of these two species.

In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central Flyways and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1990, and January 31, 1991. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1990, and February 28, 1991.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with daily bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with daily bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1990, and February 28, 1991. In Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland and Virginia the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days and may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1990, through January 20, 1991, in the Atlantic and Mississippi Flyways and September 1, 1990, through January 21, 1991, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons, therefore, they are late-season frameworks and no proposals are provided in this document concerning common moorhens or purple gallinules in the Pacific Flyway.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively.

Sandhill Cranes

Regular Seasons in the Central Flyway

Seasons not to exceed 58 days between September 1, 1990, and February 28, 1991, may be selected in the following States: Colorado (the Central Flyway portion except the San Luis Valley); Kansas; Montana (the Central Flyway portion except that area south of I-90 and west of the Bighorn River); North Dakota (west of U.S. 281); South Dakota; and Wyoming (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1990, and February 28, 1991, may be selected in the following States: New Mexico (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); Oklahoma (that portion west of I-35); and Texas (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to I-

35 at Austin; I–35 to I–35W; I–35W to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession, while hunting, a valid Federal sandhill crane hunting permit.

Special Seasons in the Central and Pacific Flyways

Arizona, Colorado, Idaho, New Mexico, Utah and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (as described in a management plan approved March 22, 1982 (revised July 28, 1987), by the Central and Pacific Flyway Councils) subject to the following conditions:

1. Outside dates are September 1–November 30, 1990, except September 1, 1990–January 31, 1991, in the Hatch-Deming Area (Zone) in New Mexico (Sierra, Luna, and Dona Ana Counties).

2. Season(s) in any State or zone may not exceed 30 days.

3. Daily bag limits may not exceed 3 and season limits may not exceed 9.

4. Participants must have in their possession while hunting a valid permit issued by the appropriate State.

5. Numbers of permits, areas open and season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

6. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

Scoter, Elder, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1990, and January 20, 1991.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

Special September Wood Duck Seasons

Florida: An experimental 5-consecutive-day wood duck season may be selected in September. The daily bag limit will be 3 wood ducks and the possession limit will be double the daily bag limit.

Tennessee and Kentucky: Experimental 5-consecutive-day wood duck seasons may be selected in September. The daily bag limit will be 2 wood ducks and the possession limit will be double the daily bag limit.

Special Early-September Canada Goose Seasons

Atlantic and Mississippi Flyways

Experimental Canada goose seasons of up to 10 consecutive days may be selected in September by Massachusetts, Michigan, Illinois, New York, North Carolina, Minnesota, and Wisconsin, subject to the following conditions:

1. Outside dates for the season are September 1–10, 1990.

2. The daily bag and possession limits will be no more than 5 and 10 Canada geese, respectively.

In North Carolina, hunting will be by State permit to take not more than 2 Canada geese daily and 4 in possession.

In New York, hunting will be by State permit to take not more than 3 Canada geese daily and 6 in possession.

3. Areas open to the hunting of Canada geese are as follows:

Massachusetts:—Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Michigan: —Lower Peninsula—All areas except the Shiawasee River, Allegan, Lapeer and Muskegon State Game Areas (SGA), the Shiawassee National Wildlife Refuge, that portion of the Maple River SGA east of State Road, that portion of the Pointe Mouillee SGA south of the Huron River, Muskegon County Wastewater Area, and the Fish Point and Nayanquing Point Wildlife Areas.

Upper Peninsula—That area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate Highway 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Illinois: McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will, and Kankakee Counties.

New York—St. Lawrence County—All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

North Carolina: That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.

Minnesota—Twin Cities Metropolitan Zone. —All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott, and Dakota Counties.

Fergus Falls/Alexandria Zone—All or portions of Pope, Douglas, Otter Tail, Wilkin, and Grant Counties.

Southwest Border Zone—All or portions of Martin and Jackson Counties.

Wisconsin—Early Goose Hunt Subzone—That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.

4. Areas open to hunting must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September Sandhill crane season.

2. Outside dates for the season(s) are September 1–22, 1990.

3. Hunting will be by State permit.

4. No more than 115 permits, in total, may be issued for the Salt River (Star Valley) and Bear River Areas in Lincoln County.

5. Each permittee may take no more than 2 geese per season.

Utah may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. A season not to exceed 4 days during September 1–9, 1990.

2. Hunting will be by State permit.

3. Not more than 200 permits may be issued.

4. Each permittee may take 2 Canada geese per season.

Oregon and Washington may select an experimental season on Canada geese subject to the following conditions:

1. The seasons in Oregon and Washington must be concurrent.

2. The seasons must not exceed 10 days during September 1–10, 1990.

3. Areas open to hunting Canada geese are:

Oregon: Starting in Portland at the Interstate Highway 5 bridge, south on I–5 to U.S. Highway 30, west on U.S. Highway 30 to the Astoria-Megler bridge, from the Astoria-Megler bridge along the Oregon-Washington State line to the point of beginning.

Washington: Starting in Vancouver at the Interstate Highway 5 bridge north on I–5 to Kelso, west on State Highway 4 from Kelso to State Highway 401, south and west on State Highway 401 to the Astoria-Megler bridge, from the Astoria-Megler bridge along the Washington-Oregon State line to the point of beginning.

4. Hunting will be by State permit.

5. Each permittee may take 2 Canada geese per day and have 4 in possession.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographic area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1990 and March 10, 1991.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, an special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Note: Total season length for all hunting methods combined shall not exceed 107 days for any species or group of species in one geographical area. The extension of this framework to include the period from September 1 to March 10, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and will be evaluated, in cooperation with States offering such extensions, after a period of several years.

PROPOSED FRAMEWORKS FOR SELECTING OPEN SEASON DATES FOR HOUSING MIGRATORY BIRDS IN ALASKA, 1990–1991

Outside Dates: Between September 1, 1990, and January 26, 1991, Alaska may select seasons on waterfowl, snipe, cranes, and tundra swans subject to the following limitations:

Hunting seasons—Ducks, geese and brant—107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10—except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. *Exceptions:* The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season should be concurrent with the duck season.

Daily Bag and Possession Limits—Ducks—Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The basic limits include no more than 2 pintails daily and 6 pintails in possession, and 1 canvasback daily and 3 canvasback in possession. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swans—In Game Management Unit 22 an experimental open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

2. The season must be concurrent with the duck season.

3. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1, 1991.

PROPOSED FRAMEWORKS FOR SELECTING OPEN SEASON DATES FOR HUNTING MIGRATORY BIRDS IN PUERTO RICO, 1990–1991

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1990, and January 15, 1991, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas—Vieques Island—closed due to habitat destruction caused by hurricane Hugo.

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all

lands between Routes 186 and 966 from the juncture on 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (*Amazona vittata*) presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Areas consisting of all Cidra Municipality and portions of Aguas Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Ducks, Coots, Moorhens, Gallinules and Snipe

Outside Dates: Between October 1, 1990, and January 31, 1991, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag and Possession Limits—Ducks—Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Common moorhens—Not to exceed 6 daily and 12 in possession; the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily and 12 in possession.

Coots—There is no open season on coots, i.e. common coots (*Fulica american*) and Caribbean coots (*Fulica caribaea*).

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

PROPOSED FRAMEWORKS FOR SELECTING OPEN SEASON DATES FOR HUNTING MIGRATORY BIRDS IN THE VIRGIN ISLANDS, 1990–1991

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1990, and January 15, 1991, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain birds: Zenaida dove (*Zenaida aurita*)—mountain dove. Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected). Common Ground dove (*Columba passerina*)—stone dove, tobacco dove, rola, tortolita (protected). Scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

Ducks

Outside Dates: Between December 1, 1990, and January 31, 1991, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 3 daily and 6 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

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BILLING CODE 4310–55–M

50 CFR Part 20

RIN 1018–AA24

Annual Waterfowl Status Meeting and Meetings of the U.S. Fish and Wildlife Service Migratory Bird Regulations Committee

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service, Office of Migratory Bird Management, will conduct an open meeting on July 25 to review the status of waterfowl populations and the 1990 fall flight forecast for ducks. The Service Regulations Committee will meet on July 31 and August 1 to develop 1990–91 waterfowl hunting regulations recommendations for presentation at the August 2 public hearing to be held in Washington, DC, and will meet immediately after the public hearing to review the public comments presented at the hearing and develop proposed 1990–91 waterfowl hunting regulations frameworks.

DATES: Waterfowl Status Meeting, July 25, 1990; Service Regulations Committee Meetings, July 31, August 1 and 2, 1990.

ADDRESSES: The Waterfowl Status Meeting will be held at the Denver Sheraton-Airport Hotel, 3535 Quebec Street, in Denver, Colorado. The Service Regulations Committee Meetings on July 31 and August 1, 1990, will be held in Room 200 of the Arlington Square Building, located 2 blocks from the Ballston Metro Station at 4401 North Fairfax Drive, Arlington, Virginia. The August 2, 1990, meeting will be held in the Penthouse of the Department of the Interior Building, 1849 C Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634–Arlington Square, Department of the Interior, Washington, DC 20240, telephone (703) 358–1714.

SUPPLEMENTARY INFORMATION: On July 25 at 8:30 a.m. at the Denver Sheraton-Airport Hotel in Denver, Colorado, the U.S. Fish and Wildlife Service, Office of Migratory Bird Management will review for State and Federal officials and any other interested parties or individuals results of the various field investigations and data analyses that are used annually to determine the status of waterfowl populations and the fall flight forecast for ducks. The information

presented will have a bearing on regulations and the regulatory proposals; however, the meeting is not a regulations meeting. Public comment will be limited to that which supplements the status information presented.

The Migratory Bird Regulations Committee of the U.S. Fish and Wildlife Service, including Flyway Council Consultants to the Committee, will meet in Washington, DC on July 31 and August 1 at 8:30 a.m. in Room 200 of the Arlington Square Building, located 2 blocks from the Ballston Metro Station at 4401 North Fairfax Drive, Arlington, Virginia, and on August 2 at about 1 p.m., in the Penthouse of the Department of the Interior building. The meeting on July 31 is to review discussions that occurred at the flyway council meetings and to discuss and develop recommendations for 1990–91 waterfowl hunting regulations to be presented at the public hearing to be held in Washington, DC on August 2 at 9 a.m. The meeting on August 1 is to assure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The August 2 meeting of the Service Regulations Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: July 2, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–15926 Filed 7–9–90; 8:45 am]

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federal register

Tuesday
July 10, 1990

Part IV

The President

Proclamation 6156—Wyoming Centennial Day, 1990

Federal Register
Vol. 55, No. 132
Tuesday, July 10, 1990

Presidential Documents

Title 3—

The President

Proclamation 6156 of July 9, 1990

Wyoming Centennial Day, 1990

By the President of the United States of America

A Proclamation

On July 10, 1890, President Benjamin Harrison signed a proclamation declaring Wyoming the 44th State of the Union. In the 100 years since that day, the people of Wyoming have built an outstanding record of achievement.

From its eastern plains to the unspoiled heights of the Teton Mountain Range, Wyoming is a land of timeless beauty and untold natural wealth. It is also a land rich in history and in examples of environmental stewardship. Generations of Indian tribes—including the Crow, Cheyenne, Arapaho, and Sioux—cultivated and cherished the vast territory that is now Wyoming, establishing a rich cultural legacy that still graces the State today. The Nation's first national park, Yellowstone, is largely located in northwestern Wyoming. Wyoming is also the home of our first national forest, Shoshone, and our first national monument, Devils Tower. Wyoming's vast wilderness areas, abundant wildlife, and other natural resources attract thousands of visitors to the State each year.

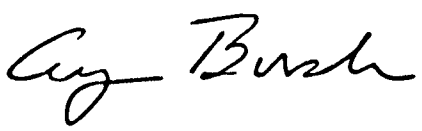
These visitors can testify not only to the State's natural beauty, but also to the generous hospitality of the people of Wyoming. The State's history, however, also speaks highly of their character and spirit. Known as the Equality State, Wyoming was the first State in the Nation to allow women to vote and the first to elect a woman as Governor. During the past century, its citizens have demonstrated a strong commitment to the ideals that unite all Americans—ideals of freedom, equality, justice, and tolerance.

Since becoming a State in 1890, the people of Wyoming have made substantial contributions to the social and economic development of the United States. Indeed, as they mark this special milestone in their State's history, all of us have reason to celebrate.

In recognition of Wyoming's contributions to the United States and in commemoration of its Centennial, the Congress, by Senate Joint Resolution 271, has designated July 10, 1990, as "Wyoming Centennial Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim July 10, 1990, as Wyoming Centennial Day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of July, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



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INFORMATION AND ASSISTANCE

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